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# ***UILDING IT RIGHT***

## **A Public Facilities Construction Administration Manual**



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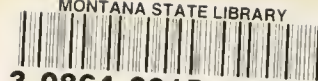
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# ***BUILDING IT RIGHT***

## **A Public Facilities Construction Administration Manual**

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For the  
Montana Department of Commerce  
Local Government Assistance Division  
Community Development Bureau

In cooperation with the  
Water, Wastewater and Solid Waste Action Coordinating Team  
(W<sub>2</sub>ASACT)

November, 2000



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## LIST OF EXHIBITS

Various documents and forms shown in *Building It Right* are provided for reference purposes only in order to provide an example of what is being discussed. ***The Montana Public Works Standard Specifications and Engineers Joint Contract Documents Committee forms and documents should not be reproduced.*** Forms identified with an asterisk are from the Montana Public Works Standard Specifications, Fourth Edition, January, 1996, Addendum 2, May 8, 2000, and copies can be ordered from the Montana Contractors Association, 1717 11th Avenue, Helena, Montana, 59601, telephone (406) 442-4162. Forms identified with a double asterisk are Engineers Joint Contract Documents Committee documents, and copies should be obtained from the National Society of Professional Engineers (<http://www.nspe.org> or 1-800-417-0348) or ACEC 1015 15<sup>th</sup> St. NW, Washington, DC 20005, or FAX 202-789-7220. Forms not identified with an asterisk are State of Montana forms or are forms that were provided by the author and are used by Morrison-Maierle, Inc..

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## PREFACE

During the past several years, state and federal public facility finance agencies have cooperated with several private nonprofit organizations and private firms to put on annual infrastructure workshops for local officials. At some of these workshops, the staff of the Morrison-Maierle, Inc., engineering firm gave a presentation called “Building It Right,” which described the basic concerns for local officials in managing the construction of a public facilities project.

The Montana Department of Commerce (MDOC), Community Development Bureau, administers two major public facilities financing programs: the federally-funded Community Development Block Grant (CDBG) Program and the state-funded Treasure State Endowment Program (TSEP). The project administration manuals for the two programs both include a chapter on managing the construction of a public facility project. We noted that the Morrison-Maierle, Inc., presentation covered a number of important issues not covered in the MDOC chapters. As a result, we requested that Morrison-Maierle, Inc., prepare a written version of their slide presentation that could be made available to local officials. Since two-thirds of CDBG and TSEP public facility projects assist local water and sewer projects, we asked them to draft a “generic” publication that could cover both these types of projects. However, you will find as you go through the text that the excellent advice included in *Building It Right* will cover many other types of public facility projects, including building projects designed and supervised by architects, rather than engineers.

Many local officials and staff are often facing their first experience in managing the construction of a major public facility project. The goal of *Building It Right* is to describe the basic concerns local officials should be aware of and to walk them through the process, step by step. We think that *Building It Right* can have long-term utility for local government officials, as well as the state and federal agencies that help communities finance these projects.

With apologies to Bill and the other Morrison-Maierle, Inc. staff involved in the project, the MDOC staff edited their original draft of *Building It Right* to highlight some regulatory concerns that we feel local officials should be aware of as they construct a public facility project. Various staff from other agencies that are part of the Water, Wastewater and Solid Waste Action Coordinating Team (W2ASACT) also reviewed *Building It Right* and provided additional input. In particular, I would like to thank those individuals from the Department of Natural Resources and Conservation, the Department of Environmental Quality, and the U.S. Department of Agriculture, Rural Development/Rural Utilities Service that took the time to provide their comments. Everyone’s participation in producing *Building It Right* is greatly appreciated.

We hope that the combination of Bill’s “no nonsense” practical advice from an engineer’s perspective, gained from the collective years of experience of Morrison-Maierle, Inc. staff, with MDOC and other agencies staff’s perspective on some of the state and federal requirements that can create headaches for local officials, will make *Building It Right* a worthwhile reference for local officials and staff.

There are many Montana local and government officials and staff, state and federal agency staff, as well as professional engineers who have many years of experience in managing or

overseeing the construction of public facility projects. We hope you will feel free to share your comments and suggestions on how we can make *Building It Right* better.

Dave Cole, Bureau Chief  
Community Development Bureau  
Local Government Assistance Division  
Montana Department of Commerce

## INTRODUCTION

This public facility construction administration manual has been prepared from a slide presentation and lecture series presented in cooperation with the Montana Department of Commerce, Local Government Assistance Division and several other state and federal infrastructure finance agencies. *Building It Right* is intended to be used by local government officials as a general guide for managing the construction of local public facility projects. The general advice and procedures should be equally applicable to cities and towns, counties, and rural water, sewer or solid waste districts. Because of the variety of forms of local governments which may utilize *Building It Right*, the text will use the term “**Community**” to refer to the local government or governing body that has entered into a contract with a design professional (an engineer or architect) and a Contractor for the construction of a public facility. As used in the text, the term “Community” may be considered as equivalent to the more formal term, “**Owner**” which is used in standard model bid terminology and appears in several of the model bid forms referred to in the text or exhibits.

The purpose of *Building It Right* is to acquaint local government officials with the procedures followed after a project has been designed, accepted by the Community, and approved by the appropriate state and federal agencies for construction. It is hoped that *Building It Right* will serve as a learning tool and guide for local government officials and staff undertaking construction projects. The recommendations presented in *Building It Right* apply to most public facility construction projects, whether or not they involve state or federal funds.

*Building It Right* assumes that the Community has already procured the services of a properly licensed engineer or architect in compliance with Montana law (Section 7-5-4301, MCA), which sets out requirements for the hiring of architects, engineers, and surveyors in response to requests for proposals. Compensation for these professional services is negotiated after the firm is selected through a competitive proposal process. Guidelines for the procurement of professional services are available from the MDOC’s, Community Development Bureau.

It is also important to remember that before inviting bids on any construction project, the Community should acquire any property, easements, or rights-of-way that might be required for construction of the public facility.

For local officials and staff undertaking their first major public facility project, the construction process may seem to be a simple, straightforward procedure. Advertise for bids, select a Contractor and pay the bills. In actuality, the Community as the “Owner” of the project has important contractual responsibilities to your Project Engineer (or architect), your Contractor, and any state or federal agencies which are assisting with the financing of your project. Although the text refers to “Project Engineer” throughout *Building It Right*, the guidance generally applies equally to a public facility project whose design and construction are under the supervision of a licensed architect. *Building It Right* will use the term “**Project Engineer**” to refer to the design professional retained by the Community. Your involvement in the construction phase of the project is crucial to the successful completion of the project. Your Project Engineer represents your eyes and ears during the construction. The Project Engineer’s years of education and on the job experience will help guide you through the construction process. However, the ultimate



success or failure of the project depends on your cooperation and understanding of the entire construction process.

It is the purpose of *Building It Right* to provide you with a basic understanding of the construction process. The information, tables and figures presented in *Building It Right* have been developed and successfully employed on thousands of construction projects. They are presented here, not as a standard, but as a guide to your understanding and expectations of the services that will be provided by your Project Engineer and your Contractor.

Not every engineering (or architectural) firm will utilize all of the methods presented in *Building It Right*. However, most will have developed similar procedures to assure that your community receives a public facility that has been properly constructed and will meet your long-term needs.

*Building It Right* is divided into three chapters:

- ❑ CHAPTER ONE: CONTRACTOR PROCUREMENT (BIDDING THE PROJECT)
- ❑ CHAPTER TWO: PROJECT CONSTRUCTION
- ❑ CHAPTER THREE: PROJECT CLOSE OUT

Each chapter contains subsections, each dealing with very important responsibilities of your Project Engineer and the Community.

Much of the information and terminology used in *Building It Right* will be needed throughout the entire construction process. Acronyms and abbreviations will abound in discussions and correspondence. As the "Owner" of the project, Community officials will be expected to know what these terms mean, and your attorney will also need to be familiar with the construction jargon.

As you make your way through *Building It Right*, make notes and ask yourself, "How does this apply to my project?" and "What is my responsibility as a local official or employee?"

When you encounter areas that are not quite clear to you, ask your Project Engineer for an explanation. You may want to involve your attorney so that he or she may also learn the meaning and implications of the construction phase. Remember, the only dumb questions are those you DO NOT ask! You have hired professionals to represent you. They want to help you through the process. Use them to their fullest!

Also keep in mind that if one or more state or federal agencies are involved in financing the project there may be specific requirements that the Community will have to comply with. For instance, both the CDBG and TSEP programs provide project administration manuals that provide information about the specific requirements of those programs, and information in general about proceeding with your public facility project. Again, when you encounter areas that are not quite clear to you, ask the funding agency for an explanation. They also want to help you through the process, and want the project to be a complete success.

*William G. Enright, P.E.*

## CHAPTER ONE: CONTRACTOR PROCUREMENT (BIDDING THE PROJECT)

The project design is completed, state and federal agencies have approved your design and the associated specifications, your funding is secure, and the Community is ready to “move dirt” and build your project. But your Project Engineer starts talking about contractor procurement, advertisement procedures, bid packages, conferences, bid openings, bonds and insurance, acceptance and award, construction administration, and change orders. “Great,” you say, “more bureaucratic red tape and costs. Why can't we just hire a contractor and get on with it?” For many local officials who are involved in their first construction project, this is an understandable question. They do not realize how complex construction a public facility project can be, and the requirements that go along with the construction phase. It is the purpose of this manual to acquaint local officials and staff with these complexities and how to deal with them.

**CONTRACTOR PROCUREMENT (BIDDING THE PROJECT)** addresses the following issues:

- ☐ Preparing the Bid Package
- ☐ Required Reviews and Approvals
- ☐ Advertising Procedures
- ☐ Responding to Contractor Questions
- ☐ Conducting the Pre-Bid Conference
- ☐ Bid Openings
- ☐ Bid Tabulation and Review
- ☐ Owner's Acceptance and Award

### A. PREPARING THE BID PACKAGE

Your Project Engineer will prepare the documents that will comprise the “**Bid Package.**” Typically this includes a bound volume titled “**Specifications**” or “**Project Manual**” and a set of “**Construction Plans**” (technical drawings). The Specifications or Project Manual normally consists of “**Bidding Documents,**” “**Contract Documents,**” and the “**Technical Design Specifications,**” and will be prepared by your Project Engineer using “industry standards” to the extent possible. For example, the Montana Contractors Association publishes model bidding and contract documents entitled the Montana Public Works Standard Specifications, which include standard bidding and contract documents and design specifications. It also includes a detailed definition section, which explains the terminology used in public facilities construction contracts.

The Montana Public Works Standard Specifications is prepared in cooperation with the Montana Contractors Association, the American Public Works Association, the American Society of Civil Engineers, and the Montana Department of Transportation, and conforms to the Engineers Joint Contract Documents Committee's model format.

## 1. Bidding Documents

Bidding Documents include information on the method of bidding, the process by which the bids will be evaluated, the method of contract award, and forms such as the "Invitation to Bid," "Instructions to Bidders," "Bid Form," "Bid Bond Requirements", etc. The Bid Form contains the format for the Contractor to state the unit prices or lump sum prices that the Contractor will expect to be paid for completed work. See Exhibit 1 for the text of an Invitation to Bid, Exhibit 2 for the Instructions to Bidders, and Exhibit 3 for the Bid Form.

The introduction of the facsimile (FAX) machine has revolutionized communications. However, the FAX can become a problem in the bidding process unless specific instructions are included in the Bidding Documents that allows for last minute bid modifications. Some communities choose to allow last minute bid modifications by FAX or written submission of a sealed modification. **However, if you want to allow last minute FAX bid modifications, you must include specific rules for the receipt and use of the FAX modification in the Instructions to Bidders.** An example of language that could be included in the Instructions to Bidders regarding FAX modifications follows:

### MODIFICATION AND WITHDRAWAL OF BIDS:

"Bids may be modified or withdrawn by an appropriate document duly executed and delivered to the place where bids are to be submitted at any time prior to the opening bids, June 22, 2000 at 1:00 p.m."

"A bid may be withdrawn or modified by telephone facsimile transmission (FAX). It is the bidder's responsibility to deliver the modification or the withdrawal to the location specified and prior to the time designated for opening of bids. A modification shall not reveal the bid price, but shall only provide the ADDITION to or SUBTRACTION from the original proposal amount. Bid modifications or withdrawals must be confirmed by an appropriate duly executed document and said document must be received by the Owner not more than three (3) working days following the bid opening or the bid modification or the withdrawal will not be considered."

"The Owner is in no way responsible for insuring a free FAX line or for the proper functioning of the Owner's facsimile machine. It is the sole responsibility of the bidder to confirm the receipt of the facsimile by the Owner."

## 2. Contract Documents

The Contract Documents contain the text of the contract between the Community and the Contractor. Contract Documents include legal documents such as the:

- ❑ **Agreement Form** (the contract);
- ❑ **General Conditions to the Contract** (the rules that bind both the Community and the Contractor);



- ❑ **Supplemental General Conditions** (any special conditions or clauses required by state or federal funding agencies);
- ❑ **Bid Bond** (the bid bond is legal tender, usually in the form of a bond or a cashier's check, which is payable to the Community in the event the successful bidder fails to enter into a contract with the Community within the time specified in the Bidding Documents. Montana law [Section 18-1-201, MCA] requires a bid bond equal to ten percent of the bid amount. See Exhibit 4 for a Bid Bond.);
- ❑ **Performance and Payment Bonds** (information on performance and payment bond requirements);
- ❑ **General and Technical Specifications**; and
- ❑ **Special Provisions** (provisions unique to the Community's project).

The contract includes a section describing what the Contractor is expected to provide for each item that is included in the project, often referred to as the "Measurement and Payment" section. Contracts may be either lump sum or unit priced. If a Community has reason to believe that bids may come in higher than available funds, separate bid schedules should be used ("additive or deductive alternates"). This approach provides options for bidding on components of the overall project; the bid proposal would contain several alternate schedules of work items or components to be added or deducted from the bid submittal. This would allow contractors to bid on one or all components of work items, providing generally more competition and price efficiency.

Using additive and deductive alternates must be done with care. Additive alternates should build on the basic project. Each additional additive alternate should build on the previous additive alternate so that a complete project can be realized whether all or none of the alternates are completed. For example, suppose a project consists of replacing five blocks of water main. The Owner wants to replace all five blocks, but preliminary cost estimates indicate there is only enough money for three blocks. The bid document could be structured to include the first three blocks as the basic bid, the fourth block as additive alternate No.1 and the fifth block as additive alternate No.2.

Deductive alternatives work in the same manner, only the basic bid would be for all five blocks and deductive alternate No.1 would eliminate the fifth block and deductive alternate No. 2 would eliminate the fourth block. **Deductive alternates are difficult to structure, and should be avoided if possible.** Problems in determining what to deduct, etc. can be confusing, especially if the Owner is not totally knowledgeable about what the long term effects of deducting a portion of the project will have on its performance. If deductive alternates are used, be sure to advise the bidders in the bid form exactly how the low bid will be determined. However, the use of deductive alternates is rare and not recommended.

It is wise to require the bidders to bid all additive or deductive alternates. Do not try to pick and choose alternatives based on the bids unless you have specifically advised the bidders in the bid form exactly how the low bid will be determined. For bids using the additive alternative method, it is best to award the bid based on the total bid, which includes the base bid plus all of the additive alternates. By doing this, there is no question as to how the lowest responsive responsible bidder will be determined and how the bid will be awarded. Once the low bidder is selected, the Owner can award the alternates based on available funds.

**When using additive alternates, be sure that your bid document clearly informs the bidders that there will be no allowance for anticipated profits should one or more of the additive alternatives not be awarded.** Your Engineer will develop the bid schedules and include additive alternates if necessary. **Be sure you fully understand what comprises each alternate.** Be sure that the base bid and each additive alternate has a clear end point. For example, your project is for the installation of a new water main, and additive alternate No. 1 has been included to install another block of new main. Be sure that the necessary fittings are included in the base bid to terminate the water main in the event that there are insufficient funds to award the additive alternate. The additive alternative can modify or eliminate the fittings, etc., and extend the line. If clear end points are not included, a Change Order is inevitable!

The Montana Public Works Standard Specifications also includes contract language that requires that the Contractor payment is due upon Owner approval of the pay estimate. **However, Communities that are financing their public facility projects with assistance from state or federal funding agencies should be aware that each agency has different time requirements for processing funding requests from communities.** The turn-around time between a community's request for funds and actual receipt of funds can frequently be two to four weeks or longer. If this is the case for your project, Community officials may need to incorporate a longer payment period in the contract language or arrange for interim construction financing with a local lender or INTERCAP (a short-term lending program through the Department of Commerce) to deal with this lag in the receipt of funds.

In addition, all public construction contracts must contain provisions for compliance with either federal or state prevailing wage requirements and other labor provisions. **Montana law provides that if a public agency or local government fails to include the prevailing wage rate requirements in a bid specification or contract, the contractor is relieved from the obligation to pay the prevailing wage rate and the obligation is then placed on the public contracting agency.** If federal funds, such as from the Community Development Block Grant (CDBG) Program, will be used to help fund a public facility project, the federal labor requirements will generally supersede those of the State. The pertinent federal labor requirements vary among federal agencies. For example, projects funded through the U.S. Department of Agriculture, Rural Development/Rural Utilities Service do not require compliance with the federal Davis-Bacon Act. If federal funds will be involved in your project, you should consult with the federal agency for guidance on which federal labor laws or regulations will apply to your project.

A copy of the current state wage rate determinations as provided by the Montana Department of Labor and Industry (MDLI) must be included in any solicitation for bids (Section 18-2-422, MCA) unless Montana's prevailing wage requirements are superseded by the federal Davis-Bacon Act. When federal prevailing wage rates must be used, the Project Engineer will incorporate the current wage rates published by the U.S. Department of Labor. The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised. For this reason, the Project Engineer should contact the appropriate state or federal agency approximately two weeks before bid advertising to re-verify that the state or federal prevailing wage determination is still current.



### **3. Technical Design Specifications**

Wherever possible, the technical specifications (how items are to be constructed and the minimum acceptable product) should conform to or reference the latest edition of the Montana Public Works Standard Specifications. The use of these standard model documents and design specifications, which have been employed for many years, significantly reduces the possibility for misunderstanding; reduces the number of questions regarding the project; reduces potential problems; and may result in a lower bid because the bidders are familiar with the contents and requirements of the Bid Package.

### **4. Construction Plans**

The Construction Plans will include engineering or architectural (sometimes both) drawings that represent the details of what the Community expects the Contractor to construct. Before preparing the plans for any construction project, the Project Engineer will obtain information from local public utilities regarding underground installations. The plans will show elevations (if available) of existing and proposed improvements, the location of water or sewer lines, utilities, valves and fittings, etc. The plans should contain details that show the Contractor how the roof is to be fastened to the water or sewer treatment building, how the foundation is to be constructed, etc. The plans constitute a complex technical instrument that is relied upon by the contractors from the time they prepare their bids through the final completion of the project. Do not be concerned if you do not understand everything that is in the plans; if you have questions, ask your Project Engineer. Experienced contractors will understand what the plans are saying.

## **B. REQUIRED REVIEWS AND APPROVALS OF THE BID PACKAGE**

If the project is funded, in part, with state or federal funds, the Project Engineer will typically be required by the funding agencies to submit a copy of the Bid Package for review and approval by the funding agencies to ensure that all of the required provisions are included. To ensure that all of the required bid provisions are included, the Project Engineer should plan on sending a copy of the bid document to any funding agency no later than 30 days prior to the initial bid advertisement. Specific requirements of funding agencies should be referred to since a longer review period may be required.

**The bid package must also be reviewed and approved by all other applicable state or federal agencies with review and approval authority for the type of project planned. Drinking water or wastewater (sewer) projects require approval from the Montana Department of Environmental Quality prior to construction.**

Once the complete bid package has been assembled, it should be also be reviewed by the Community's attorney for completeness and consistency with state laws and regulations. Montana law (Section 18-2-404, MCA) requires that all public works contracts be approved in writing by the public entity's legal adviser prior to execution.

You should become familiar with your Specifications or Project Manual document. Now that you have an understanding of what a Bid Package is comprised of, let's begin our overview of the contractor procurement phase of your project.

## **C. ADVERTISING FOR A CONTRACTOR**

Under Montana law, municipalities are required to award contracts for projects costing more than \$25,000 through a competitive bidding process (Section 7-5-4302, MCA), and counties are required to award contracts for projects costing more than \$50,000 through a competitive bidding process (Section 7-5-2301, MCA). There is an exception to these requirements in emergency situations. Since very little work can be done for \$25,000 or even \$50,000, in today's economy, you are most likely going to be competitively bidding almost any public facility project. The first step in procuring a Contractor to construct your project is to advertise for bids.

The "Advertisement for Bids" (sometimes also called an "Invitation to Bid") is your way of letting the construction industry know that your Community plans to construct a project for which they may be interested in submitting a bid. The more exposure the bid solicitation receives, the more qualified contractors will be aware of it, increasing the likelihood of receiving lower and better bid proposals. At a minimum, the Advertisement for Bids should be published in the local newspaper. In addition to the local newspaper, the Community should also advertise in newspapers with regional distribution in their area of the state. If the project is large enough, the Advertisement for Bids may be published statewide or even in national publications. Refer to Sections 7-5-4302 (Municipalities) and 7-1-2121 (Counties), MCA, for the advertising requirements that are required by state law.

In addition, many Project Engineers will send copies of the Advertisement for Bids to "Builder's Exchanges," such as the one administered by the Montana Contractors Association. A Builder's Exchange is an organization, supported by contractors, suppliers and associates which serve as a central location where advertisements and copies of the Bid Package may be examined prior to requesting a set of documents that will be used for bidding. If a contractor is interested in your community's project, he or she will request a Bid Package (the plans and specifications) from the Project Engineer. The Project Engineer will usually charge a fee to cover the cost of production and to encourage only those contractors genuinely interested in bidding on the project to request the documents.

### **1. What Is Required in an Advertisement for Bids**

In general, the Advertisement for Bids contains the name of the Community; a brief description of the project; a generalized listing of the work and materials to be provided by the successful bidder; the name and address of the Project Engineer, along with the cost for the Bidding Documents; the time and place for a Pre-Bid Conference; and most important, the time, date and location of the Bid Opening. To reduce the cost of advertising, the invitation will often state that Bidding Documents may be viewed at the office(s) of the Project Engineer and at various Builder's Exchanges.

Your Project Engineer may also send copies of the Advertisement for Bids to a group of selected contractors. This is done to insure that these contractors are aware of the project and to solicit their interest in your project. The concept of a competitive bid is to attract as many qualified bidders as possible for your project. By soliciting a number of contractors, we are looking for the lowest priced, responsive and responsible bidders. Encouraging adequate competition is of obvious benefit to the Community.

## 2. Advertisement Procedures

Depending on the funding agency, there are certain procedures that must be followed when advertising for bids. Obviously, the first step is to advertise for bids. Certain requirements must be met for the time the project is advertised, these times often being regulated by state or federal law or the regulations of the principal funding agency. As a general rule, whenever federal and state requirements both apply to a situation, the more restrictive requirements govern. Frequently, this tends to be the federal law or regulation. However, in the case of procurement, most federal agencies follow what is termed a “common rule” which sets administrative requirements for federally funded grants and loans to local governments. Both in the case of procurement of engineering and architectural services and of bidding for a public project, Montana law is more specific and restrictive than the standard federal procurement requirements.

The state legal advertising requirements set out below for municipalities and counties set minimums for public solicitation. It may be advisable to broaden solicitation efforts by sending “Invitations to Bid” to Builders Exchanges or directly to individual contractors. Your Project Engineer will be your best source of advice on the length of the advertisement period. The minimum advertising requirements summarized below are also subject to change by the Montana Legislature. The Community’s attorney should always consult current Montana law for the latest bid advertising requirements for the form of local government entity involved.

### a. **City/Town Advertising Requirement**

For contracts more than \$25,000, pursuant to Section 7-5-4302, MCA, municipalities must advertise once per week for two weeks with the second publication made not less than five days or more than twelve days before the bid opening. **(Bids must be opened no sooner than five days after the last advertisement and no later than twelve days after the last advertisement.)**

### b. **County Advertising Requirement**

Similarly, Section 7-1-2121, MCA, requires that counties must advertise twice, no less than six days apart, the first advertisement no more than twenty-one days and the last advertisement no less than three days, before bids are opened for contracts more than \$50,000. **(Bids must be opened no sooner than three days after the last advertisement and no later than twenty-one days after the first advertisement.)** School districts and county water and sewer districts must also comply with the county advertising requirement.

## 3. Scheduling the Bid Opening

Local governments, especially in small or rural communities, should carefully consider the bid date when scheduling the beginning date for advertising their project. If possible, the Bid Opening should be scheduled for either during or just prior to a regularly scheduled meeting of the governing body to avoid the cost or inconvenience of a special meeting. Depending on the number of bids received, a Bid Opening should normally take no longer than 30 minutes.



## **D. RESPONDING TO BIDDER QUESTIONS**

The bidding phase of a project represents intense competition among the bidders. Each bidder presumably wants the project, and is looking for a competitive "edge" that will make his or her bid the lowest bid, but still allow them a reasonable profit. Because of this, almost all bidders have questions or desire clarifications from time to time. It is imperative that all questions are submitted in writing to the Project Engineer and that all responses are in writing and distributed to all parties holding the Bid Package. The vehicle used to answer questions is called an "Addendum." The Addendum is an official Bidding Document that will become part of the Contract Documents when a contract is awarded.

**One word of caution at this point in the bidding phase of your project: the Community must be careful about what local officials and employees tell a bidder. Local officials or staff should not attempt to answer any bidder's questions regarding the project under consideration. The safest and recommended procedure is to direct all questions to the Project Engineer.**

Too often, an oral answer is supplied to one of the bidders and not to the remaining bidders. This can result in the bid being protested because the successful bidder had an unfair advantage over the rest of the bidders in that he or she knew something about the project that they did not. Even questions as elementary as the location of a storage yard should be directed to the Project Engineer. Something as seemingly insignificant as this may provide the bidder with knowledge of a potential cost savings, of which other bidders are unaware.

When local officials or staff receives questions from a prospective bidder, the bidder should be advised to contact the Project Engineer. If the person persists, the questions should be written down, the contents of the questions verified with the prospective bidder, and then forwarded to the Project Engineer. Do not jeopardize your project by inadvertently answering a seemingly insignificant question. The information network within the construction industry is very effective and a simple response to a question can void the entire bidding process. The result of a protested bid is usually a re-bid of the project which would involve a delay in construction and possibly increased costs, or even legal action, which usually results in hard feelings and more important, a poor working relationship between the Contractor and the Community.

## **E. BID ADDENDUMS**

"Addendums" are a normal part of the bidding process and should not be viewed by the Community as an omission or error on the part of the Project Engineer. Each project has its unique points that are not always clear to the bidders. The issuance of Addendums helps to clarify any questions, provides updated information, and results in better, more responsive bids by the bidders. An unclear requirement in a set of Bidding Documents usually results in the bidders "padding" their bid to cover a questionable requirement.

**Any amendments to the original bid package must be mailed as an Addendum to each bidder, and every bidder must be given a reasonable period of time to review and respond to the Addendum.**

## F. THE PRE-BID CONFERENCE

A “Pre-Bid Conference” is a commonly used and highly recommended procedure used to inform potential bidders about the project, and is usually held at the project site. All prospective bidders are invited and encouraged to attend the conference. Some agencies and communities require attendance at the Pre-Bid Conference as a qualification for bidding to help assure that all prospective bidders receive the same information at the same time.

Selected members of the Community's staff, the Project Engineer, and the Resident Project Representative (RPR) (in the past, sometimes referred to as the “Inspector”) should attend the Pre-Bid Conference along with the prospective bidders. This conference provides the bidders with the opportunity to review the Plans and Specifications with the Owner and the Project Engineer, ask questions, and view the site.

It is highly recommended that the RPR attend the Pre-Bid Conference, since he or she will be the Project Engineer and Community's “eyes and ears” on the project. The RPR needs to be fully informed of the proceedings at the Pre-Bid Conference so that he or she will be in a position to respond to problems or questions that come up during the actual construction.

## G. INDEPENDENT SITE VISITS

Community officials and staff should discourage independent site visits by potential bidders to the extent possible if the principal purpose of the visit is to ask them questions about the project. Obviously, if a prospective bidder wants to perform some soil borings or obtain a soil sample for analysis, the Community should oblige the Contractor, as the results of their independent analysis will aid them in preparing a better bid. Contractors obtaining this type of information have no obligation to share the information with other bidders.

## H. THE BID OPENING

On the day bids are to be received, the Community must have someone of responsibility available at the location designated for the receipt of bids from the opening of the business day until the time set forth in the Advertisement for Bids to receive the bids. **Bids must be submitted in a sealed envelope and should not be opened by the person receiving the bids.** If a bid is not submitted in a sealed envelope, it should not be accepted until it is sealed and marked in accordance with the Instructions for Bidders (contained in the Bidding Documents). **Each bid received should be marked with the date, the time the bid was received, and the initials of the person receiving the bid. The bid submittals should remain sealed and safely stored in a vault or a secure location to prevent tampering with the bids and to protect the Bid Bonds inside the sealed bids.** The recording of this information is essential to prevent a protest in the event a bidder complains that the Community allowed bids to be submitted after the time stipulated in the Advertisement for Bids.

Expect a lot of activity in the room prior to the bid. Contractors are finalizing their bids, suppliers are reworking their quotations to the bidders, and subcontractors are revising their quotations to the general contractors bidding on the project. The advent of the cellular phone has lessened, to some degree, the amount of activity that is seen by the Community, but it is common to



receive bids within one to two minutes of the closing time for the receipt of the bid. This is why it is extremely important to date, note the time the bid was received, and initial each bid as quickly as possible.

It is advisable to designate a clock clearly visible to the bidders that will be the "official" time for the receipt of bids. It is a good idea to check the time before the commencement of business and set the "official" clock accordingly. A back up timepiece, (usually a wrist watch) should be coordinated with the "official" clock in the event of a power failure. Some bidders may protest if a bid is perceived to be accepted after the stipulated time. Verification of the alternate timepiece by another member of the staff or an elected official is also advisable.

## **1. Bid Modifications by FAX**

As noted previously in section A., some communities choose to allow for last minute bid modifications by facsimile machine (FAX) or written submission of a sealed modification. However, if you want to allow last minute bid modifications, you must have included specific instructions to cover this in the Instructions to Bidders.

## **2. Opening the Bids**

A Bid Opening is a legal proceeding of the Community and should be conducted in a businesslike manner. Certain people should be present, and specific actions should be performed, at the Bid Opening.

### **a. Who Should Be Present at the Bid Opening**

At a minimum, a responsible representative of the Community, (usually the city or town Clerk-Treasurer or county Clerk and Recorder) and one or more members of the governing body should be present to represent the Community. In addition, the Project Engineer or a member of the engineering firm's staff, who is thoroughly experienced in the administration of the bidding process, should be present to assist the Community with the opening and examination of the bids for conformance and completeness. **The Community's attorney or legal counsel should also be present to advise the local officials on any bid irregularities and to review any protests that may be filed by a bidder.** On more than a few occasions, a Bid Opening has had to be postponed because of an irregularity while local officials waited for the Community's attorney to be summoned to the Bid Opening to resolve the issue. Therefore, the participation of the Community's attorney is strongly recommended to expedite the bid opening process.

### **b. Reading of the Bids**

According to guidelines prepared jointly by the Consulting Engineers Council of Montana and the Montana Contractors Association, "Maintaining the integrity of the bidding process demands strict conformity to bid specifications by both the owner and the bidder." After the designated time for the receipt of bids, the bids are assembled on a table and each bid document individually opened and reviewed prior to reading dollar amounts. **The bid package should be reviewed for conformance with the Instructions for Bidders: all Addendums are signed, noted on the Bid Form and attached to the bid; that the bid is signed; that there are no**

conditions attached to the bid; and that the required Bid Security (Bid Bond or cashier's check) is attached.

**Each bid must be reviewed for irregularities prior to reading aloud the dollar amounts (see “Handling Bid Irregularities,” below).** If there are no irregularities and the bid conforms to all of the requirements, either the Project Engineer or the designated community representative will read the bid. It is preferred that a local official read the bid. The Project Engineer will assist the official in reading those parts of the bid relevant to the bidders. **Usually the items read aloud are the name of the bidder, the bidder’s state registration number, the Bid Bond amount, that all Addendums are signed and attached to the bid, that the bid is signed, and the total amount of the bid.** If the bid contains multiple schedules (“additive or deductive alternates” or options for bidding on components of the overall project), the Community may choose to read the amounts of the individual alternate schedule bids as a courtesy to the bidders present in the audience. **Any bid modification that has conformed to the requirements for bid modifications must also be read aloud at this time.**

Once all of the bids have been opened and read aloud, the Community should state that all bids will be taken under advisement and that all bidders will be notified as to the final result of the bid when the bids are tabulated and checked. The Community should also thank the bidders for their interest and effort in submitting their bid on the project.

### **c. Handling Bid Irregularities**

**If any of the following bid irregularities are found, the amounts should not be read or considered if determined after reading, and the bid should be returned to the bidder:**

- ☐ bid proposals received after the specified deadline;
- ☐ bid proposals not submitted on specified forms or altered in form by the bidder;
- ☐ alteration of a bid as to the specified time of commencement or completion of work;
- ☐ unsigned bid proposals;
- ☐ bid proposals not accompanied by the specified guarantees (bid bond, etc.);
- ☐ bid proposals by contractors not registered with the Montana Department of Labor and Industry, contrary to the bid specifications or state law;
- ☐ qualification of a bid or bid items in a bid proposal contrary to the specified requirements of bid items or bidding documents;
- ☐ bid proposals which omit items required by the specifications; or
- ☐ failure to acknowledge an addendum.

This guideline is not an exclusive list of the irregularities that can occur, but may serve as an aid in determining other irregularities.

**Examples of minor or non-substantive bid irregularities that may be waived include:**

- ☐ omission of date when signed, or title of person signing;
- ☐ failure to initial erasures (assuming other information is legible);
- ☐ failure to acknowledge an addendum which does not affect quantity, quality, time or price;
- ☐ submission of a bid in an unsealed envelope;

- ❑ omission of a subcontractor's or supplier's name at bid submission time;
- ❑ unit price bid proposals which include correctable, reconcilable arithmetic errors if the unit price does not change; or
- ❑ lump sum bid proposals which include correctable, reconcilable arithmetic errors if the amount on which the award will be based does not change.

Should a bidder identify an error in the bids, in any form, the Community's attorney should review the State statutes governing bid irregularities before proceeding further. **Any irregularity in a bid must be referred to the Community's attorney for a ruling on the legality of the bid and its conformance to the bidding requirements. When all matters of bid irregularities are resolved, the low bidder will then be determined.**

**DO NOT ask the Project Engineer to give an opinion on a bid irregularity. He or she is not an attorney and is not qualified to give advice on legal matters. Likewise, your attorney is not an engineer or architect, and should not be asked to give advice on engineering or architectural matters.**

### 3. Bid Tabulation

After the bids have been read, the Project Engineer will tabulate the bids. Bidders sometimes make arithmetic errors on their bid forms when they are in a hurry to make last minute changes to their bids. It is for this reason that the Bids are taken under advisement. The tabulation procedure checks all of the arithmetic, noting and making corrections as necessary. If an error in a bidder's bid is discovered, the Project Engineer should request verification from another member of their professional staff. Errors in arithmetic have changed bid results, so the careful checking of bids is important.

The Project Engineer may request that he or she be allowed to take the bids back to their office to tabulate the bids and to check them for accuracy. This is a common request that the Community should allow. **However, do not allow the Project Engineer to take the Bid Security with the bid. Remove the Bid Security and lock it up in a safe or similar secure location. Remember, the Bid Security is legal tender.** Some communities may also prefer to make copies of the Bid Form.

When all of the bids have been checked and verified, the Project Engineer will prepare a "Bid Tabulation." The Bid Tabulation is a list showing all of the bids received in a tabular form. Some funding agencies require that the accuracy of the Bid Tabulation be formally certified. This can be done by the Project Engineer, if necessary. An example of a Bid Tabulation is shown in Exhibit 5.

## I. SELECTING THE CONTRACTOR

Once the bids have been opened and tabulated, there are steps that need to be taken before the Community awards the project to the selected the contractor.



## **1. Contractor and Project Superintendent Review**

Following the bid opening, the low bid should be reviewed to ensure that the bid submission was technically and legally responsive to the solicitation for bids, that the contractors and all subcontractors are qualified and have the capacity to carry out the project as scheduled. If, in the opinion of the Project Engineer and the Community's attorney, the low bid proves to be unsatisfactory for any reason, and the Community chooses to use the next lowest bidder, a statement of justification must be sent to the low bidder with a copy retained in the construction contract file.

In addition to checking and tabulating the bids, the Project Engineer and the Community should review the qualifications of the Contractor submitting the lowest bid and those of the contractor's Project Superintendent. Most Bid Documents contain a form titled "Information Required of the Contractor," or a similar title. This information informs the Community of such things as whether or not the Contractor visited the site, the name of the Contractor's proposed Project Superintendent, and other general information. It is rare that a Community can disqualify a bidder for information contained on this form, but it can alert the Project Engineer and the Community to be aware of certain questions and possible problems in the future.

State law requires counties to award bids to "the lowest and best responsible bidder," while municipalities are required to let bids "to the lowest responsible bidder." Montana law does not define "responsible bidder," however, procurement regulations adopted by the U.S. Department of Housing and Urban Development (HUD) give some guidance:

Grantees and sub-grantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

This language was adopted by HUD under what was referred to previously as the "Common Rule" which sets out administrative requirements for federally-funded grants and loans to local governments. The underlined text should provide a working definition of "responsible bidder," particularly for construction projects funded in part with federal funds.

If there are questions regarding whether a Contractor is a "responsible bidder," the Community's attorney should be consulted immediately for guidance.

## **2. Obtain Debarment Review of Low Bidder**

If the construction project will be funded in part with state or federal funds, prior to awarding any construction contract, the Community may be required to provide notice to the appropriate funding agency or agencies of the name of the prospective low bidder or bidders and the principal owner(s) of the contracting firm. The funding agency or agencies will determine if the names of the low bidders are listed and will notify the Community of the contractor's eligibility or ineligibility.

If the project is federally funded, the U.S. General Services Administration publishes and periodically updates "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs" which identifies individuals and firms that are prohibited from participating in federally funded projects. If the project is state funded, the State of Montana has a similar provision to help ensure that contractors awarded public works contracts are eligible. The Community may be required by a state funding agency or agencies to provide the name of the prospective low bidder or bidders to determine whether that contractor has been debarred under Montana law.

Even if the project is only funded with local funds, Communities should contact the Montana Department of Labor and Industry (MDLI) Labor Standards Bureau as soon as possible following the bid opening and before awarding any construction contract to determine whether any of the contractors have been debarred under Montana law. The MDLI Labor Standards Bureau (telephone 444-4619) should be given the names of the prime contractor's firm and its principal owner(s), as well as any subcontractors, selected for the pending contract. Contractors or subcontractors found by the MDLI to have willfully violated the provisions of the state prevailing wage law may be barred from receiving contracts or subcontracts subject to the provisions of the law for a period not to exceed three years after the date of entry of a final judgment. **If the contractor is determined to be ineligible, the Community may offer the contract to the first alternate bidder or may reopen the bidding procedures.**

**Construction Contractor Registration, which was passed by the 1995 Legislature, requires all construction contractors and subcontractors in the building and construction industry that have employees to be registered with the state as a registered contractor.** This registration ensures contractors are complying with all employment laws, such as workers' compensation. If the contractor is registered, the Community can ensure that the contractor has workers' compensation coverage, and therefore, it has protected itself from upward migration of liability. If the construction contractor is registered and in good standing on the date the contract begins, the liability for workers' compensation accidents will not be the responsibility of the general contractor or the Community.

While the law exempts construction "independent contractors" without employees from registering, many general contractors will hire only registered contractors to protect themselves from upward migration of liability. If a contractor hires an unregistered independent contractor, (even if that person has a workers' compensation exemption), the contractor still risks the consequences of liability for workers' compensation should an individual be hurt on the job.

Montana's workers' compensation law does not allow coverage from other states' workers' compensation plans in the construction industry. If the contractor is only bidding on a job in Montana, it may ask for a "Bid Only" registration. When the contractor comes to work in Montana, the contractor must obtain a workers' compensation policy specific to Montana. Construction companies with Bid Only certificates must upgrade their registration to "Employer" status before they can have employees working in Montana.



If you have questions about Contractor Registration, call 406-444-7734, or write the Montana Department of Labor and Industry, Employment Relations Division, Contractor Registration, PO Box 8011, Helena, MT 59604.

### **3. Montana Contractor's Preference**

Montana law (Section 18-1-102, MCA) provides that bidders that are Montana residents must be allowed a preference on a contract against the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given Montana bidders must be equal to the preference given in the other state or country. The resident bidder's bid must not be more than 3% higher than the lowest responsible nonresident bidder.

**Montana Contractor Preference is not applicable to Montana public construction contracts funded in whole or part with federal funds (Attorney General opinion, Volume 42, Number 35, issued November of 1987).** This opinion would include federally funded public facility construction programs, such as the Community Development Block Grant (CDBG) program, the State Revolving Fund (SRF) loan programs, or the U.S. Department of Agriculture, Rural Development/Rural Utilities Service, which are common sources of funding for many types of public facility projects.

### **4. Subcontractor Review**

Most contractors employ subcontractors to complete a portion of their work. Sometimes a federal funding agency will require the use of "Disadvantaged Business Enterprises" (DBE) in a project, and specify the percentage of the project work to be awarded to a DBE or DBE's. If this is the case, the Project Engineer will carefully review the DBE submittal that will be included in the Bid Package to insure that the bidder has complied with the bidding requirements.

In some situations, a Community may not want a specific subcontractor working on the project. In this case, the Community may request the Contractor to find a more acceptable subcontractor. In so doing, the Community is agreeing to pay any additional costs involved by requiring a new subcontractor.

### **5. Award Recommendation**

When both the Community and the Project Engineer are satisfied that the bids are correct and that the Contractor and his or her subcontractors are capable of completing the project, the Project Engineer will prepare a "Letter of Recommendation" to the Community. This letter will recommend to the Community that the contract for construction be awarded to the successful bidder if the Community has the financial capability to fund the project.

It is customary at this time to return the bid securities to all but the three lowest bidders. The three lowest bidders' bid securities are withheld in the event the lowest bidder fails to complete an Agreement for the construction of the project with the Community within the specified time. If the low bidder fails or refuses to enter into an Agreement with the Community, the lowest bidder's Bid Bond will be forfeited and applied to the bid submitted by the second lowest bidder. The sequence can be repeated with the third lowest bidder if necessary. In the event that a

bidder fails to enter into an Agreement within the stipulated time, not only does the bidder forfeit the Bid Security, but the bidder also is responsible for making up any shortfall between the value of his or her bid plus the Bid Security and the value of the next bid. Once an Agreement between the Community and the low bidder is executed, the remaining bid bonds are returned.

## **J. COMMUNITY'S ACCEPTANCE AND NOTICE OF AWARD**

When the Community receives the Letter of Recommendation from the Project Engineer, the local officials will carefully review the entire project budget. In the event that all bids exceed the amount of funding available for the construction project, the Community has two options:

- ❑ use additional financing resources, such as increasing the amount of a planned local bond issue or increasing the amount of funding to be borrowed from state or federal loan programs; or
- ❑ modify the bid package and repeat the entire bid process as outlined above.

**Under no circumstances can the Community negotiate with the low bidder to bring the offer in line with the project budget.** If the Community and Project Engineer built separate bid schedules ("additive or deductive alternates") into the Bid Package, then the Community does have some room to adjust the offer to fit the project budget. As discussed in the section on preparing the Bid Package, the bid proposal would contain several alternate schedules of work items or components to be added or deducted from the bid submittal. This approach allows contractors to bid on one or all components of work items, providing generally more competition and price efficiency. Refer again to Section A-2 for more information on additive or deductive alternates. You and your Engineer will determine which, if any of the additive alternates can be awarded. Be careful not to commit all of your funds, leave some money (5 to 10%) for contingencies. The unexpected will likely occur.

A good example is the discovery of an abandoned structure such as a underground storage tank buried in the path of your improvement. Neither you, your Engineer, and certainly not the Contractor, were aware of this structure during the design of the project, but it is in the way and has to come out. The Contractor deserves to be paid for the additional work that will be required to remove the structure. Having some money in reserve will allow the project to move forward without delay, and reduce the possibility of the Contractor submitting a claim for delay, standby time, etc.

The Contractor can submit a claim for standby time if resolution to a problem similar to this is not handled in a timely fashion. The Contractor often has rented or leased the heavy equipment being utilized on your project. "Idle iron" costs the Contractor money, and that cost usually bites into the Contractor's profit. Be prepared to deal with the unexpected.

**When satisfied that there are sufficient funds available to complete the project for all basic cost elements (construction, legal and professional services, and project administration) the Community issues a "Notice of Award."** This starts the ball rolling on the construction contract(s). However, check with any funding agencies first to ensure that you are authorized to issue the award notice.

The issuance of the Notice of Award allows the Contractor to order Performance and Payment Bonds, insurance, etc., and in some cases allows the Contractor to order materials and equipment. Exhibit 6 is a Notice of Award. **A copy of the Notice of Award should be sent to any federal or state agency that is providing funding for the project.**

**The Community should issue the Notice of Award within 30 days of the bid opening unless there are special circumstances, such as the funds are not yet completely available or the project requires some final action or approval by a federal or state agency. Generally, a bid is valid beyond sixty days only with the agreement of the low bidder. If a delay of longer than 60 days is anticipated, the Community should contact any state or federal agency that is providing funding for guidance.**

The complete contract package should consist of an executed contract document, which includes the following attachments:

- ☐ all items included in the bid package;
- ☐ the contractor's bid proposal;
- ☐ bonds and insurance forms; and
- ☐ signed contractor certifications.

**In the event that the accepted bid or bids received are less than the approved budget for the construction project, any state or federal agency that is providing grant funding may want to share proportionately in any savings. If this occurs, the Community should contact any state or federal agencies that are providing funding for guidance.**





## **II. CHAPTER TWO: PROJECT CONSTRUCTION**

This section deals with the actual construction of your project. During the course of construction, each party (the Community, the Project Engineer and the Contractor) has certain responsibilities. These responsibilities are clearly spelled out in the contracts between the Community and Project Engineer, and the Community and Contractor.

**PROJECT CONSTRUCTION** addresses several critical issues including:

- ❑ Responsibilities of the Community, Project Engineer and the Contractor
- ❑ Pre-Construction Activities
- ❑ Construction Administration
- ❑ Construction Records
- ❑ Construction Problems
- ❑ Safety Issues

### **A. RESPONSIBILITIES OF THE COMMUNITY**

As the Community and "Owner" of the project, you have specific responsibilities to the Project Engineer, the Contractor, and possibly state or federal funding agencies that may be involved in financing the project. The Owner's responsibilities to the Project Engineer and the Contractor are spelled out in detail in Article 8 of the General Conditions found in the Montana Public Works Standard Specifications. The responsibilities to any state or federal funding agencies will be spelled out by the individual funding agency.

#### **1. Community's Responsibilities to the Project Engineer**

**All communications or requests from the Community to the Contractor should be issued through the Project Engineer.**

If the Community should terminate the Project Engineer, the Community must designate a new Project Engineer who will have the same status as the former Project Engineer.

#### **2. Community's Responsibilities to the Contractor**

**The Community is responsible for providing all of the lands, easements and rights-of-way that are designated as part of the project and for use of the Contractor.** Unless otherwise specified in the Contract Documents, the Community must obtain and pay for all easements for permanent structures or permanent changes in existing structures. **The Contractor is responsible for those lands and the access needed for temporary construction facilities or storage of materials and equipment.**

The Community must provide the Contractor with the engineering survey to establish construction reference points that the Project Engineer considers necessary to proceed with the project. The Community must also make available to the Contractor copies of those reports of site explorations and subsurface conditions that were used by the Project Engineer in preparing the Plans and Specifications.

**The Community must obtain and maintain the Community's own liability insurance.** This may include insurance to protect the Community against claims arising from operations under the Contract Documents. Unless specifically stated to the contrary in the Contract Documents, the Community is responsible for maintaining property insurance for the work at the project site for the full insurable value of that work. The Community must also purchase and maintain boiler and machinery and/or additional property insurance if required by Supplementary Conditions or laws and regulations. In both of the latter cases, the insurance policies must list the Contractor, subcontractors, Project Engineer and the Project Engineer's consultants as additional insured parties. None of these insurance policies can be canceled, changed or refused renewal unless the Contractor is given 30 days written notice by certified mail.

The Community is required to execute Change Orders (Written Amendments to the contract with the Contractor) which cover the following:

- ❑ Changes in work ordered by the Community;
- ❑ Changes in work required because of acceptance or correction of defective work;
- ❑ Changes in work agreed to by the Community and Contractor;
- ❑ Changes in the contract price or time agreed to by the parties; or
- ❑ Those changes in the contract price or schedule that incorporates certain written decisions rendered by the Project Engineer.

Unless otherwise specified, costs for all inspections, tests, and/or approvals required by laws or regulations must be paid by the Community.

**Under the terms of the standard Agreement (contract) based on the Montana Public Works Standard Specifications, the Contractor payment is due upon the Owner's approval (based on the Project Engineer's recommendations) of the Application for (Progress) Payment, unless a longer period for payment has been agreed to, or claims have been made against the Community due to the Contractor's performance, or there are other items entitling the Community to offsets against the amount recommended.**

The Community can order the Contractor to stop work if:

- ❑ the work is defective,
- ❑ the Contractor fails to supply sufficient workers or suitable materials or equipment, or
- ❑ the Contractor fails to furnish or perform work in accordance with the Contract Documents until the cause for the stop order has been eliminated.

At any time and without cause the Community may suspend the work, or any portion of the work, for not more than 90 days by providing written notice to the Contractor and the Project Engineer. Under such a suspension, the Contractor may be entitled to an increase in the contract price or an extension in the Contract Time, or both.

Under certain circumstances, the Community may terminate the services of the Contractor. These circumstances are listed in Article 15 of the General Conditions found in the Montana Public Works Standard Specifications.

### **3. Community's Responsibilities to the Funding Agencies**

The Community's responsibilities to any state or federal funding agencies will be spelled out by the individual funding agency. Each agency typically has certain files that Communities are expected to keep on the project. There may also be certain actions required of Communities throughout the construction period to ensure that specific requirements are being complied with. For instance, the CDBG and TSEP programs in the Department of Commerce list several actions to be accomplished by a Community, such as checking weekly payroll reports and interviewing construction employees, to ensure that the Contractor is paying the prevailing wage rates to his employees.

### **B. RESPONSIBILITIES OF THE PROJECT ENGINEER**

The Project Engineer will be the Community's representative during the construction period. The scope of the Project Engineer's authority is described in the Contract Documents and cannot be extended without written agreement between the Community and the Project Engineer.

The Project Engineer has certain contractual responsibilities to the Community. These responsibilities are detailed in Article 9 of the General Conditions found in the Montana Public Works Standard Specifications. The Project Engineer will employ a Resident Project Representative (RPR) to be on-site to monitor the project during construction. The RPR has no authority to modify the project plans or specifications but does have the experience to observe problems and recommend a modification to the Project Engineer. The RPR cannot make design changes and modifications, but will channel all written requests to the Project Engineer for a decision.

**The Project Engineer, or the RPR, will visit the project at appropriate intervals during the various stages of the construction to observe the progress and quality of the work and to generally determine that work is proceeding in accordance with the Contract Documents.** Presence on the job by the Project Engineer and the RPR is to provide a greater degree of confidence in the suitability of construction, and to allow an accurate determination of the completed work for purposes of payment. The Project Engineer will keep the Community informed of work progress and will guard the Community against defects and work deficiencies.

**However, the Project Engineer is not responsible for the Contractor's:**

- ☐ **means, methods, techniques or procedures of construction,**
- ☐ **safety precautions and programs, or**
- ☐ **failure to perform or furnish the work specified in the Contract Documents.**

Also, the Project Engineer is not responsible for the acts or omissions of the Contractor or any subcontractor, supplier or any other person or organization performing or furnishing any of the work. **However, even though the Project Engineer is not directly accountable for the responsibilities of the Contractor, the Project Engineer is the Community's "eyes and ears."** The Project Engineer should keep the Community informed of anything that does not appear to be proper or proceeding as specified so that the Community can take action if necessary.



The Project Engineer serves as the initial interpreter of requirements of the Contract Documents and judge of the acceptability of the project work. All claims, disputes or other matters relating to such interpretation and/or acceptability are initially referred to the Project Engineer in writing. This also applies to claims with respect to changes in the contract price or contract time. The Project Engineer will render a formal written decision within a reasonable time without showing any partiality to either the Community or the Contractor. The Project Engineer may issue such written clarifications or interpretations of the requirements of the Contract Documents as may be necessary and which must be consistent with or reasonably inferable from the overall intent of the Contract Documents.

The Project Engineer may authorize minor variations in the work provided they do not involve an adjustment in the contract price or contract time and are consistent with the overall intent of the Contract Documents. Such variations may be accomplished by "Field Orders" and will be binding on the Community and the Contractor. The Contractor may claim that a Field Order justifies an increase in the contract price or an extension of the contract time.

**The Project Engineer has the authority to disapprove or reject work that he or she believes to be defective. The Project Engineer also has the authority to require special inspection or testing of the work even when the work is fabricated, installed or completed.**

With reasonable promptness, the Project Engineer will review and approve shop drawings and samples submitted by the Contractor. Such review and approval is only for conformance with the project design concept and compliance with the information given in the Contract Documents. The Project Engineer may require the Contractor to submit corrections to shop drawings or samples.

**The Project Engineer will accept and review the Contractor's Applications for Progress Payment. After reviewing the application, the Project Engineer will either recommend payment and present the application to the Community, or return the application to the Contractor stating in writing why the application is being refused.** A recommendation for payment will be based on the Project Engineer's on-site observations of the work in progress and accompanying information that the work has progressed to the point indicated.

The Project Engineer is responsible for determining the actual quantities and classifications of unit price work performed by the Contractor. Following a review of his or her preliminary decisions with the Contractor, the Project Engineer will provide a written decision (as an Application for Payment or otherwise). Such written decisions are binding on the Community and the Contractor unless either party delivers a written notice to appeal such decision to all parties.

**Upon written notice from the Contractor that the entire project (or an agreed portion) is complete, the Project Engineer must make a final inspection with the Community and the Contractor.** If the Project Engineer determines that the work is incomplete or defective, he or she must so notify the Contractor in writing.



**When the Project Engineer is satisfied the work is complete, he or she will accept and review the Contractor's Application for Final Payment. In accordance with Montana law (Section 18-2-306, MCA), unless otherwise provided by law or the contract, the Project Engineer must decide whether or not to make final acceptance within 10 days after receiving the Contractor's Application for Final Payment. Final acceptance means that the Project Engineer has certified that the facility or building been constructed in accordance with the terms and conditions of the contract documents. The Project Engineer must give written notice to the Community and the Contractor that the work is acceptable. Within 30 days after final acceptance by the Project Engineer, the Community must make the final payment of the contract price specified in the contract to the Contractor.**

## **C. RESPONSIBILITIES OF THE PROJECT CONTRACTOR**

The Contractor has certain contractual responsibilities to the Community and/or the Project Engineer which are defined in Article 6 of the General Conditions found in the Montana Public Works Standard Specifications. **It is the responsibility of the Contractor to complete the project in accordance with the Plans and Specifications and to comply with applicable safety, labor, and environmental protection laws and regulations.**

### **1. Subcontractors**

In accordance with the General Conditions of the Montana Public Works Standard Specifications, the apparent low bidder must submit a list of all subcontractors to be used on the project within seven days after bids are opened. The Community may request an "experience statement" for each subcontractor. Before giving the Notice of Award, the Community or Project Engineer may object to any proposed subcontractor and request an acceptable substitute. This could cause an increase in the contract price. If the apparent low bidder refuses to make the substitution, the contract may not be awarded to the bidder without forfeiture of the Bid Security. Listed subcontractors to which the Community or Project Engineer does not submit a written objection will be considered acceptable. Likewise, the Contractor cannot be required to employ a subcontractor to which the Contractor has a reasonable objection.

**The Contractor is fully responsible for all acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with the Contractor.** Nothing in the Contract Documents creates any direct contractual relationship between the Community or Project Engineer and any subcontractor, supplier or other person or organization, nor is there any obligation on the Community or Project Engineer to pay or assure the payment of any moneys due any subcontractor, supplier or other person or organization.

### **2. Project (Construction) Superintendent**

During the project, the Contractor must keep a competent Project Superintendent (also frequently called the "General Superintendent") on the site who will supervise and direct the construction work required in the Contract Documents. The Project Superintendent cannot be replaced without written notice to the Community and the Project Engineer, except under extraordinary circumstances.

### **3. Qualified Personnel and Time of Work**

The Contractor must provide competent and qualified personnel to lay out the work and perform the construction specified in the Contract Documents. All work must be performed during regular working hours. The Contractor must not permit overtime work, work at night, or work on weekends and holidays unless agreed to in writing by the Community with notice provided to the Project Engineer. The Community's contract with the Project Engineer may provide that If the Community allows the Contractor to work beyond these times, the Project Engineer is entitled to be compensated for the additional working hours performed by the Engineer. Emergency work may be done without prior permission.

### **4. Materials and Equipment**

The Contractor must furnish and assume full responsibility for all materials, labor, transportation, utilities, facilities and incidentals necessary for the performance and completion of the project. Unless otherwise specified, all materials and equipment must be new and of good quality. The Project Engineer may require the Contractor to provide evidence as to the kind and quality of materials and equipment. The Contractor may substitute materials or equipment specified in the Contract Documents provided the Project Engineer has determined such substitution is equivalent or equal to that named. The Contractor may also utilize a substitute means, method, sequence, technique or procedure to that specified in the Contract Documents if the proposed substitute is first determined to be acceptable by the Project Engineer.

### **5. Payment of Permits and Licenses**

Unless otherwise stated in the Contract Documents, the Contractor should obtain all required construction permits and licenses, and pay all applicable permit fees. The Community may assist the Contractor in obtaining such permits and licenses. The Contractor is responsible for paying for all governmental charges and inspection fees necessary for the project. In addition, the Contractor must pay all charges of utility companies for connections to the project.

The Community usually pays the building permit fee and any review fee. The cost of these reviews is generally unknown until the documents are submitted and a fee determined by the reviewing agency. It is the Community's responsibility to pay these review fees since they are not normally included in the Agreement between the Project Engineer and the Community.

### **6. Compliance with Laws and Regulations**

The Contractor is responsible for complying with all laws and regulations applicable to furnishing and performance of the project work. If the Contractor performs any work that the Contractor knows or has reason to believe is contrary to applicable laws and regulations without providing notice to the Project Engineer, the Contractor will be responsible for all costs arising from such actions. If the Contractor determines that the Plans and Specifications are at odds with applicable laws and regulations, he or she must provide prompt written notice to the Project

Engineer. However, it is not the Contractor's primary responsibility to make sure the Plans and Specifications are in accordance with such laws and regulations.

## **7. Payment of Taxes**

The Contractor is responsible for payment of all taxes required to be paid by the Contractor that are applicable during performance of the work.

## **8. Site Conditions**

During the progress of the work, the Contractor must keep the project site free from waste materials, rubbish and other debris generated by the work. The Contractor must remove all waste materials, equipment, surplus materials, tools and appliances from the premises at the completion of the project and leave the site clean and ready for occupancy. The Contractor must restore any property to its original condition that is not designated for alteration.

All construction equipment and materials and the operations of workers must be confined to the project site or those areas specifically identified in the Contract Documents. The Contractor is fully responsible for damages to any project land or areas, as well as any land or areas contiguous to the project site, resulting from performance of the work (except damage or loss attributable to the fault of Plans and Specifications or acts or omissions of the Community or the Project Engineer). Should any claims for damages be made against the Community or the Project Engineer because of performance of the work, the Contractor must promptly attempt to settle or otherwise resolve the claim.

## **9. Record Keeping**

The Contractor must maintain at the project site one record copy of all drawings, specifications, addenda, written amendments, change orders, work directive changes, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents are to be available to the Project Engineer for reference.

## **10. Prevention of Injury, Damage and Loss**

**The Contractor is responsible for compliance with all applicable laws and regulations of any governmental agency that has jurisdiction for the safety of workers, other persons or property, and must protect them from injury, damage and loss. The Contractor must erect and maintain all necessary safeguards for such safety and protection.** The Contractor must notify and cooperate with the owners of adjacent property and underground facilities and utility owners when the project activities may affect them. The Contractor's duties and responsibilities for the safety and protection of the work must continue until the project is completed.

In the event of emergencies which might affect the safety or protection of persons or property at or adjacent to the project site, the Contractor is obligated to act to prevent threatened injury, damage or loss without special authorization from the Community or the Project Engineer. The Contractor must provide prompt notice to the Project Engineer if the Contractor believes any



significant changes in the work or variations from the Contract Documents were caused by the emergency.

During any disputes or disagreements with the Community, the Contractor will continue the work and adhere to the project schedule. Unless agreed to in writing by both parties, no work will be delayed or postponed pending resolution of any disputes or disagreements.

To the fullest extent permitted, the Contractor must indemnify and hold harmless the Community and the Project Engineer from and against all claims, damages, losses and expenses arising out of or resulting from the performance of the work and caused by negligent acts or omissions of the Contractor, any subcontractor, or other person or organization directly or indirectly employed by any of them.

## **11. Shop Drawings and Underground Installations**

**After checking and verifying all field measurements and complying with applicable procedures specified in the Contract Documents, the Contractor must submit to the Project Engineer required copies of all shop drawings.** Without causing a delay in the work, the Contractor must also submit all samples required by the Contract Documents. The shop drawings and samples are to include or be accompanied by a specific written indication that the Contractor has satisfied his or her responsibilities under the Contract Documents. The Project Engineer will promptly review and approve the shop drawings and samples only for conformance with the project design concept and compliance with information given in the Contract Documents. Any work performed prior to the Project Engineer's approval of required shop drawings or samples will be the sole expense and responsibility of the Contractor.

The Project Engineer will obtain information from local public utilities regarding underground installations and incorporate them in the construction plans. The plans will show elevations, if known, of existing and proposed improvements, the location of water or sewer lines, utilities, valves and fittings, etc. The Contractor should be required to verify these locations prior to actual construction and then be held liable for any subsequent damages to underground facilities.

## **D. PRE-CONSTRUCTION ACTIVITIES: THE PREPARATION AND REVIEW OF THE AGREEMENT (CONTRACT)**

Prior to construction, many contractual requirements must be met in order for the actual construction to begin. The Project Engineer will prepare forms, contract documents and other documents for the Community's review and signature. Be sure you understand what it is you are signing. These documents commit your Community financially to the project and all of the stipulations set out in the documents.

Once the "Notice of Award" has been issued by the Community, the Project Engineer will prepare the "Agreement" (Contract) between the Community and Contractor for the Contractor's signature. Along with the Agreement, the Project Engineer will also prepare the format for the Performance and Payment bonds. In addition, the Project Engineer may send a list of insurance requirements, in the form of a checklist, enumerating the types, limits and other



conditions of insurance that will be required of the Contractor before the Agreement is signed by the Community. (The requirements for insurance, performance and payment bonds are clearly spelled out in the General Conditions, the Supplemental General Conditions, and possibly the Special Provisions of the Bidding Documents). We will briefly discuss each of these documents.

## **1. The Agreement (Contract)**

The Agreement is a legally binding contract between the Community and the Contractor once it is executed by both parties. Exhibit 7 is an example of an Agreement Form. The Agreement contains the date of the Agreement, the official name of the parties entering into the Agreement, [i.e., "John Doe Construction" (Contractor) and the "City of Anywhere" (Community)]. The Agreement will generally describe the work for which the Agreement pertains, and a qualifying description that more specifically describes the work or a portion of the work required for the total project to which the Agreement applies.

The Agreement will specify the contract time, generally stating "The Work will be completed within \_\_\_\_ days after the date . . . ." In too many contracts, the definition of "days" is often missing. There is a vast difference in calendar and working days. Be sure this is clearly stated in the Bidding Documents to avoid confusion during the construction period. In addition, the Agreement usually specifies the time that the Project Engineer has allocated for construction. This is usually stated in a manner similar to "The Contractor will perform the work on Monday through Friday from 8:00 a.m. to 5:00 p.m." This may seem somewhat limiting on first reading, but there is a serious monetary cost involved with letting the Contractor work beyond the daily or weekly time period established in the contract documents. For example, the Engineer may have based his or her contract with the Community based on the hours and days stipulated in the Agreement with the contractor. Allowing the contractor to work beyond the hours or days stipulated in the agreement subjects the Engineer to additional costs that they may be entitled to bill the Community for and collect if the contract with the Engineer has this type of provision. (In some cases, Liquidated Damages may be used for this purpose). The Agreement will also specify the liquidated damages that will be assessed from the Contractor if he or she exceeds the contract time.

Most Community officials will recall their original contract negotiations with their Project Engineer. During those negotiations, the Project Engineer discussed the time frame they had determined to be reasonable for the Contractor to complete the construction of the project. Part of the Project Engineer's fee was based on the amount of time that the RPR would be present on the job to observe the Contractor's work. If the Contractor does not finish the work within the time frame allowed, the Project Engineer may be entitled to compensation for the additional services he or she must provide during the time it takes the Contractor to complete the work after the contract time has expired.

Usually contracts between the Community and the Contractor state that any additional time required for the Project Engineer beyond the stated contract time will be paid for by the Contractor by withholding from the Contractor payment in the amount the Community would have to pay the Project Engineer for his or her services. The Agreement may state:

Community and Contractor recognize that time is of the essence of this Agreement and that the Community will suffer financial loss if the Work is not substantially complete within the time specified (above), and any extensions thereof allowed in accordance with the General Conditions. They also recognize the expense and difficulties involved in providing legal or arbitration proceedings involving the actual loss by the Community if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, Community and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor will pay Community \_\_\_\_\_ dollars (\$\_\_\_\_\_) for each day that expires after the stipulated time herein until the work is substantially complete.

Essentially, this section of the Agreement states that the Community may assess any costs associated with the continuance of services provided by the Community under the Agreement with the Contractor. Proving financial loss for the lack of use by a Community is very difficult, unless the Community can document such loss. However, it is much easier to document the additional costs the Community will bear for the continued employment of the Project Engineer as a result of the contract time overrun.

The Agreement also contains an example employed by many Project Engineers to document additional time beyond the time stipulated in the Agreement for services provided by the Project Engineer or his or her staff. The key word here is documentation. If the Community or the Project Engineer does not have adequate documentation, the Contractor can challenge the assessment for charges, and most likely will win. If this happens, local officials and your Project Engineer will probably enter into discussions as to how the Project Engineer will be compensated for services provided. Remember, the contract with the Project Engineer is with the Community, not between the Contractor and the Project Engineer. Be sure you are clear on the provisions of the Agreement for payment to the Project Engineer, in the event the Contractor exhausts the time allowed for construction prior to substantial completion of the work

## **2. Contract Price**

The Agreement between the Community and the Contractor will list a price for the completed work. Rarely will the contract amount listed in the Agreement be the actual price the Community will pay for the completed project. Hopefully, the price listed in the Agreement will be in excess of the final amount of the actual project. This is because the Project Engineer has usually included contingencies in the quantities used to solicit initial bids. Additionally, especially in unit price type bids, the actual amount of work completed will differ from the amount initially bid, with some items under-running initial quantities and other items exceeding initial quantities (see "Reconciliation Change Order" in Chapter 3). Remember, the actual amount that the Community is required to pay the Contractor is the amount stipulated in the Agreement, unless the Agreement has been formally modified by a "Change Order" (Change Orders will be discussed later in this section).

## **3. Progress Payments**

If the contract period exceeds thirty days, the Contractor will expect periodic payment for services completed. This request is commonly referred to as a "Progress Estimate," and

**the payment the Community makes to the Contractor is often referred to as a Progress Payment.** The Project Engineer will prepare a progress estimate for consideration by community officials. Refer to the previous discussion regarding the Responsibilities of the Community regarding progress payments.

#### **4. Retainage**

**“Retainage” is an amount of money, usually five (5) percent of the total amount due to the Contractor that is held by the Community as additional insurance that the Contractor will properly complete the construction work.** (The 1999 Legislature reduced the amount that can be retained from ten percent to five percent of the total amount due to the Contractor.) **The retainage is held pending the final inspection and acceptance of work.** The actual amounts retained may vary, depending on the total amount of the contract, progress of construction, and other specific instructions in the contract. Additionally, retainage gives the Community a fund of allocated expenses from which the Community may pay the Project Engineer for services rendered beyond the contract time.

#### **5. Gross Receipts Tax**

Section 15-50-205, MCA, requires contractors working on public projects to pay to the Department of Revenue a 1% gross receipts tax and, in addition, requires local governments to withhold this 1% of all payments due to contractors and transmit these funds to the Department of Revenue. In addition to the Retainage described above, **the Community must retain one percent of the total amount of each partial payment due to the Contractor and send these funds to the Montana Department of Revenue for the Contractor's Gross Receipts Tax.**

Contracts valued at less than \$5,000 are exempt from this provision. The “Contract Award Report” and the “Gross Receipts Withholding Report” are shown in Exhibit’s 8 and 9. **The Community or the prime Contractor must complete the Contract Award Report and mail to the Department of Revenue within ten (10) days after the contract or bid has been officially awarded. The Community must complete the Gross Receipts Withholding Report and remit the 1% tax to the Department of Revenue within thirty (30) days of payment to the Contractor.**

#### **6. Final Payment**

**When the Contractor has completed all of the work required under the Agreement, he or she is entitled to final payment. Final payment releases all of the Retainage previously withheld from the Contractor during the course of the project and represents the final reconciliation between the Community and the Contractor for services rendered.** The Project Engineer will advise the Community when final payment should be made. Chapter 3 deals exclusively with a project closeout. We will discuss final payment, reconciliation change orders, and other pertinent documents in that chapter.

#### **7. Interest**

As with any financial obligation, late payments by the Community are subject to interest. The contract between the Community and the Contractor defines the interest rate that you agree to



pay the Contractor if the payment is late. Your Project Engineer will work with you to establishing dates that progress estimates must be presented to you for payment to help you avoid interest charges.

## 8. Contractor's Representations

This is perhaps one of the most important clauses in the Agreement between the Community and the Contractor. This section states that the Contractor is familiar with the nature, location and extent of the work required under the Agreement and that the Contractor has studied the reports of investigations and tests of the subsurface and latent physical conditions at the site, etc., that were relied on by the Project Engineer in designing the project and other items identified in the General Conditions and elsewhere in the bidding documents.

Essentially, the Contractor is stating that the bid presented and represented in this Agreement is the full price compensation he or she expects to receive for work completed. It also states the limitations upon which the Agreement is entered into, and defines a path for the Contractor to follow if conditions discovered during the execution of the work differ substantially from those described in the contract documents.

## 9. Contract Documents

The Agreement must state which documents constitute the entire Agreement between the Community and the Contractor. The usual procedure that is followed is to list the documents within the Agreement. The list of documents is found in Article 9 of the Agreement. **It is extremely important that the list of contract documents identify any addendums that are to be included in the Agreement, along with any "after the fact" contract modifications that relate to the Agreement.**

## 10. Miscellaneous

There are often certain conditions relating to the Agreement that do not fall under a specific article or paragraph of the Agreement between the Community and the Contractor. Most agreements contain a "Miscellaneous" article to deal with these items. Refer to Article 10 for an example of this section.

## 11. Signatures

In order for any Agreement to be legal, it must be signed, sealed and attested to by both parties. **Once the Agreement has been assembled, it should also be reviewed by the Community's attorney for completeness and consistency with State laws and regulations. Montana law (Section 18-2-404, MCA) requires that all public works contracts are approved in writing by the public entity's legal adviser prior to execution.**

Refer to the last page of the Agreement for an example of a signature page to an Agreement between the Community and the Contractor.



## **E. PERFORMANCE AND PAYMENT BONDS**

Two very important documents are included in the Agreement to protect the Community from the Contractor's failure to complete the work or to pay laborers and suppliers. These two documents are known as a Performance Bond and a Payment Bond. These documents can be compared to an insurance binder that legally obligates the Contractor's insurance company or bonding company to complete the project if the Contractor fails to complete the project, or pay all laborers and suppliers moneys due to them, if the Contractor fails to or cannot pay them.

These documents take many forms but usually conform to those shown in Exhibit 10 (Performance Bond) and Exhibit 11 (Payment Bond). If local officials have any doubts about these forms, they should consult with their attorney and their community's insurance agent for assurance and clarification.

**It is very important that neither the Performance Bond nor the Payment Bond be dated prior to the date of the Agreement.** To predate the bonds may invalidate them simply because there was no agreement in place linking the bonds to a specific project. Your Project Engineer will assist you in the signing and dating of contract documents.

## **F. INSURANCE**

It is critical that the Community receive documentation that the Contractor is providing adequate insurance for the project. Insurance requirements are usually set out in the General Conditions, Supplemental General Conditions and the Special Provisions of the Agreement. Of all the contact documents, the insurance requirements are usually the ones that are most often not in compliance with the Agreement in the first submittal. **It is important that local officials, the Project Engineer and your attorney review the insurance submittal provided by the Contractor to assure complete compliance with the Agreement.**

The Project Engineer is not an insurance underwriter or an agent and is not qualified to pass judgement on whether or not an insurance certificate completely fulfills the requirements of the Agreement. Consultation with your community's insurance agent is therefore extremely important. **Do not execute the Agreement, Performance Bond or Payment Bond until local officials are entirely satisfied that the insurance coverage provided by the Contractor is in complete accordance with the Agreement requirements.**

## **G. CONDUCTING THE PRE-CONSTRUCTION CONFERENCE**

The "Pre-Construction Conference" is the first official meeting between the Community and the Contractor. This meeting should be held soon after the contract award and is scheduled when the Contractor has provided all of the necessary contract documents. **During the Pre-Construction Conference, project responsibilities are defined, key players are introduced and the Contractor's proposed schedule is presented to the Community and the Project Engineer.** The conference represents a key opportunity prior to beginning project construction for the Community and its Project Engineer to give instructions to the Contractor.

Items that are normally discussed in a Pre-Construction Conference include:

- ❑ Identification of official representatives of the Community, Project Engineer and Contractor,
- ❑ The introduction of the Contractor's Project Superintendent and a discussion of his or her responsibilities,
- ❑ The introduction of the Project Engineer's Resident Project Representative (RPR) and a discussion of his or her duties, responsibilities and limitations,
- ❑ Identification of any state or federal agencies involved in the project and their requirements, such as prevailing wage rates for construction; payment of overtime; equal employment opportunity requirements; and the use of registered subcontractors,
- ❑ Chain of command,
- ❑ Licenses, permits and certificates that may be provided by the Community, and those that need to be provided by the Contractor,
- ❑ The need and location of any project signs,
- ❑ Notice to Proceed, Suspend Work and Resume Work Orders,
- ❑ Contract completion time and the Contractor's schedule to complete the project,
- ❑ Liquidated damages, what they will be assessed for and how they will be assessed,
- ❑ Extension of contract time and what will constitute a valid request by the Contractor for a contract time extension,
- ❑ Payments to the Contractor for work completed on the project,
- ❑ Submission of certified payrolls weekly from the Contractor and any subcontractors employed on the project; posting prevailing wages continually at the job site; and employment of apprentices or trainees,
- ❑ Materials and payment for materials on hand,
- ❑ The use of alternate materials,
- ❑ Submittal and approval of shop drawings,
- ❑ Manufacturer's operation and maintenance (O&M) data and required start-up services,
- ❑ Extra Work, Work Directives and Change Orders,
- ❑ Subcontractors that will be employed by the Contractor,
- ❑ Preparation, submittal and approval of concrete and asphaltic concrete mix designs,
- ❑ Equipment that will be used by the Contractor,
- ❑ Final acceptance of work documents required, and certification of payments to suppliers and subcontractors' payments,
- ❑ Guarantee on completed work,
- ❑ Staking of the work,
- ❑ Testing of materials and compaction,
- ❑ Safety regulations,
- ❑ Maintenance of traffic, traffic signs and traffic control devices,
- ❑ Haul roads that will be used by the Contractor,
- ❑ Underground and overhead utilities,
- ❑ Land and right-of way,
- ❑ Insurance requirements and certificates, and
- ❑ Any special conditions of the contract.

In order to document discussions that occur during the Pre-Construction Conference, local officials should record minutes of the conference. **Minutes of the meeting should be recorded and distributed to all parties in attendance and to any federal or state funding agencies participating in the project. A verbatim record is not necessary; the names of the persons who attended and a summary of the comments and issues covered is sufficient.** Minutes of the Pre-Construction Conference should be retained by the Community.

**The Community and prime contractor should include all subcontractors in the discussions to ensure that the subcontractors are aware of the requirements that will apply to them, such as state or federal prevailing wage requirements.**

The Montana Department of Commerce TSEP and CDBG programs each provide a "Pre-Construction Conference Planning Guide" as part of their grant administration manuals which is available upon request. Some of the more important items that should be covered in a Pre-Construction Conference are discussed below. In addition, many of the Pre-Construction Conference items discussed here will be applicable throughout the entire construction process. To avoid repetition later, we will examine some of the items in detail.

It is common for the Community to execute the Agreement at the Pre-Construction Conference, especially if a federal agency is involved. This is usually the case if all or part of the funding for the project is being provided by the U.S. Department of Agriculture, Rural Development/Rural Utilities Service, as their representative is also required to sign the Agreement. If the Agreement will be signed at the Pre-Construction Conference, it is important that the Community's attorney review the draft Agreement in advance to assure local officials that it is acceptable.

## **1. Attendance List**

A sign-in roster should be provided at the Pre-Construction Conference. The list should have columns for the attendee's name, company and telephone number(s). Key people such as the Project Engineer's RPR, the Contractor's Project Superintendent and the Community's emergency contact should list telephone numbers where these people can be reached 24 hours a day. If night, weekend or holiday people are to be utilized during the project, they should attend and their telephone number(s) listed.

## **2. Introductions**

**The Pre-Construction Conference is usually led by the Project Engineer.** All participants in the pre-construction conference should be introduced so that each participant in the project is familiar with the person and the organization they represent. For example, if the project involves underground construction of a pipeline, representatives of the telephone, power, natural gas and cable TV companies should be in attendance and introduced. These people have a financial interest in the construction of your project, because in Montana all public and private utilities have a legal obligation to clearly mark the location of their underground utilities.



### 3. Identification of Contractor's Project Superintendent

**The Contractor's Project Superintendent must attend the Pre-Construction Conference.** This person is the person with whom the Project Engineer and the RPR will deal on a daily basis. It is important that the Contractor appoint a qualified Project Superintendent who will be on the project from the beginning through project close out.

### 4. Project Engineer's Resident Project Representative ( RPR)

**The Project Engineer's RPR must attend the Pre-Construction Conference.** He or she will be introduced to the key people that will be involved in the construction of the project. The duties and responsibilities of the RPR will be discussed. The RPR cannot make design changes and modifications, but will channel all written requests to the Project Engineer for a decision.

### 5. Federal and State Agencies

If the project is being funded in part by federal or state agencies, there will be additional requirements that must be complied with during the course of the project. **During the Pre-Construction Conference, the agency representatives or the Community's designated Project Administrator will explain the state and/or federal requirements to the Contractor and other conference participants.** The Community and your Project Engineer will likely have been working with these agencies and should already be aware of their requirements.

### 6. Licenses, Permits and Certificates

The contract documents usually require the Contractor to obtain all necessary licenses, permits and certificates that will be needed to complete the project. For building projects, this would include the building permit. Usually on building projects, the Project Engineer has previously cleared the building permit with the regulating building department or the Montana Department of Commerce Building Codes Division, and the permit should be ready to be issued to the Contractor. The Community usually pays the building permit fee and any review fee. The cost of these reviews is generally unknown until the documents are submitted and a fee determined by the reviewing agency. It is the Community's responsibility to pay for these review fees since they are not normally included in the Agreement between the Project Engineer and the Community.

Any special permits that were acquired by the Community for the project should also be discussed at this time. Copies of all the licenses, permits and certificates should be exchanged between the Contractor and the Community.

### 7. Notice to Proceed

**After executing the construction Agreement and holding the preconstruction conference, the Community may then provide the prime contractor with a "Notice to Proceed."** This notice establishes the construction starting date and the estimated date of completion. This document is very important to the Contractor and to the Community because it controls the contract time. The Notice to Proceed is shown in Exhibit 12. A copy of the Notice to Proceed



should also be sent to any state or federal agency that is providing funding for the project, at the time the notice is sent to the contractor.

## **8. Suspend Work Order and Resume Work Order**

The Contractor's "clock" starts running based upon the starting date in the Notice to Proceed. **The only way the "clock" can be stopped is by the issuance of a "Suspend Work Order."** Likewise, the only way the "clock" can be restarted is by the issuance of a "Resume Work Order."

These orders are generally used for winter shut down or in cases where it is impossible for the Contractor to continue working on the project due to some circumstance. **When a Suspend Work Order is issued, all work on the project stops. The Contractor may not install any new work and can perform only maintenance work as required on work completed prior to the Suspend Work Order.**

A Suspend Work Order is usually issued for an extended period of time. The Project Engineer and his RPR will not be on the project site, with the exception of periodic visits for maintenance of conditions by the Contractor. Only when a Resume Work Order has been issued, may the Contractor resume normal construction activities.

Suspend Work Orders may result in an increase in the Project Engineer's fee due to the fact that additional paper work will be needed during the suspended work period that was not originally budgeted at the time fees were negotiated. Your Project Engineer will discuss the issuance of a Suspend Work Order with you should the need ever arise.

## **9. Contractor's Schedule**

**The Contractor will be required to submit a schedule of proposed activities that will be completed during the course of construction.** This schedule may be a simple bar graph for a small, uncomplicated project, or it may be a computerized "Critical Path Method" schedule for a complex project where the installation of items or equipment must be completed in a specific order.

The Contractor's schedule is an important document. It will be used throughout the project for things like public announcement of street closures, construction traffic control, scheduling of the Project Engineer's RPR and by the Community, in scheduling your staff. **The schedule is a dynamic instrument. It must be updated on a weekly basis.** This should be emphasized at the pre-construction conference.

**The schedule will be used by the RPR to track the Contractor's progress.** It can serve as an early warning device to alert the Community that the project may not be completed within the time allocated. The schedule can help the Project Engineer "stimulate" the Contractor to add additional work forces, etc., to avoid liquidated damages at a later date.

In the event a contractor is unable to complete a construction project, the Community may assess the Contractor for the costs the Community must incur in order to complete the project.

This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts needed to satisfactorily complete the construction. These provisions must be consistent with the corresponding elements of the construction Agreement.

## **10. Liquidated Damages**

This important provision of the Agreement should be reviewed at the pre-construction conference to reacquaint participants with the consequences if the Contractor exceeds the contract time stated to complete the project.

## **11. Extension of Contract Time**

Weather is the most uncontrollable factor in completing a construction project on schedule. At times, the Contractor will be physically unable to perform any work on the project, such as underground utility work during periods of heavy rain. The standard Agreement allows the Contractor to request a contract time extension. These extensions are usually granted unless other circumstances would alter this consideration. However, the Community must realize that granting an extension of contract time to the Contractor will also extend the time the Project Engineer and the RPR will need to work on the project. This may mean that you will have to pay additional funds to the Project Engineer and engineering staff. Some Project Engineers have built a contingency into their fee to cover a small time extension, but Community officials, with the aid of the Project Engineer, will have to examine each request for a time extension and carefully consider its implications.

## **12. Payments to the Contractor**

**The Contractor will expect to be paid on a monthly interval during the course of the contract. The RPR and the Project Superintendent will prepare an estimate of work completed and present the list to the Project Engineer. After review, the Project Engineer will sign off on the estimate, often referred to as a “Progress Estimate” and present it to the Community for payment.**

**Timing for the submission of a progress estimate is important.** Since the Community is a governmental body, local officials have certain days designated for the conduct of official business. The Agreement, (General Conditions, Supplemental General Conditions and the Special Provisions) sets forth the time allowed between the submission of a progress estimate and the time the Contractor is paid. Therefore, a cut-off date for the submission of a progress estimate is established during the pre-construction conference that will allow the Project Engineer and Community officials sufficient time to review and approve payment to the Contractor.

For example, if your regular meeting date is the first Monday of the month, then a date near the 20th of the month preceding should be designated as the cut-off date. After that date, any work completed by the Contractor will appear on the next month's progress estimate. Establishing a cut-off date, coordinated with your regular meeting dates, will avoid confusion and problems as your project progresses.

In addition, communities that are financing their public facility projects with assistance from state or federal funding agencies should be aware that each agency has different time requirements for processing construction funding requests from communities. The turn-around time between a community's request for funds and actual receipt of funds can frequently be two to four weeks or longer. If this is the case for your project, Community officials may need to incorporate a longer payment period in the construction Agreement language or arrange for interim construction financing with INTERCAP, or a local lender to deal with this lag in the receipt of funds.

### **13. Payments by the Contractor**

Of equal importance to the Community are payments to suppliers and subcontractors by the Contractor. Although you do not have a direct contract with these parties, you do have a responsibility to assure that they are paid in a timely manner. **Most Project Engineers have included a provision in the construction Agreement that requires the Contractor to provide invoices marked "paid" from their suppliers and subcontractors showing that these parties have been paid either in full or in proportion to the amount paid to the Contractor for services rendered or material delivered up to the cut off date.** (The recent edition of the General Conditions has removed the ability of the Community to assure themselves that all subcontractors and suppliers have been paid in proportion to the work completed). Most communities are not immune to liens on public projects and this method of requiring the Contractor to provide paid invoices helps to alleviate this problem at contract close out time.

### **14. Labor and Prevailing Wage Requirements**

Since the 1930's, both federal and state laws have required the fair payment of wages for laborers and mechanics employed under construction contracts funded in whole or in part by public funds. **Montana law (Section 18-2-422, MCA) requires that the contract contain a provision requiring the payment of the state prevailing wage rates, and the Bid Package must contain the appropriate, current state prevailing wage rates, unless the state's prevailing wage requirements are superseded by the federal Davis-Bacon Act.** The state prevailing wage rates are provided by the Montana Department of Labor and Industry (MDLI). If federal funds will be used to help fund a public facility project, the Community should ask each federal funding agency whether they will require that the federal prevailing wage requirements supersede those of the state. For example, the Community Development Block Grant (CDBG) program requires the use of the federal prevailing wages. **In addition, Montana law (Section 18-2-403, MCA) provides that if a public agency or local government fails to include the prevailing wage rate requirements in a contract, the contractor is relieved from the obligation to pay the prevailing wage rate and the obligation is then placed on the public contracting agency.**

**As long as the requirement to comply with prevailing wage requirements has been included in the Agreement, it is the Contractor's responsibility to assure the payment of workers according to the specified wage rates.** However, the Community also has an oversight responsibility to insure that workers are, in fact, being paid properly. Most experienced



contractors are very familiar with state and federal prevailing wage requirements. Some inexperienced contractors may make honest mistakes because they fail to fully understand the complexities of prevailing wage compliance. Unfortunately, there are a few unscrupulous contractors who may try to make up for a very low bid and a tight profit margin by cheating workers of their fair compensation.

The need to assure prevailing wage compliance is a situation that supports the old adage that “an ounce of prevention is worth a pound of cure.” Problems with labor requirements can delay local construction projects and cost Community officials headaches and considerable time and money. **To help avoid problems, Community officials should designate a local staff person or consultant, before the start of construction, to ensure compliance with prevailing wage requirements and to act as liaison with the contractor.** Further preventive steps include:

- ❑ Ensuring that all bid documents, contracts and subcontracts contain applicable prevailing wage provisions and the current wage determination(s), and that all contractors and subcontractors are not currently debarred from working on public works projects by the State or federal government.
- ❑ Conducting a preconstruction conference to inform all contractors and subcontractors performing contract construction work of their prevailing wage and other labor obligations.
- ❑ Conducting on-site project inspections, which include employee interviews and checking for posting of current wage determinations at the project site.
- ❑ **Montana law requires that the current prevailing wages be posted prominently at the construction site continually in an accessible location, beginning with the first day of construction work, so that workers can easily find out what they should be paid.** For posting the required prevailing wages at the job site, the contractor can use a bulletin board attached to the side of a temporary field office or a storage or equipment trailer or a plywood billboard located near the site of field construction activities. The current wage rates can be placed in a plastic covering to protect them from weather. Regardless of the method used, it is the contractor's responsibility to provide reasonable access for employees to a copy of the state or federal prevailing wage rates that apply to the project.
- ❑ Promptly reviewing certified weekly payroll reports for accuracy and comparing of them to the required prevailing wage rates. **Payroll reports must be submitted weekly by both the prime contractor and subcontractor(s).** On many of the state and federally funded projects, the weekly certified payroll must be checked against the wage rates in the Agreement to make sure that workers are being paid wages at least equal to the required prevailing wage and fringe benefit rates.
- ❑ Interviewing construction workers to confirm that they are, in fact, being paid the required prevailing wages and that their job classification accurately reflects their actual duties at the job site. **Many federal and state funding agencies require that workers be periodically interviewed to insure that they are being correctly compensated for their work.**

- Resolving all labor complaints or violations promptly.
- Maintaining detailed records to document all administrative and enforcement activities with respect to labor and prevailing wage requirements.

The most common types of prevailing wage violations include mathematical errors or the use of incorrect amounts for hourly wages or fringe benefits, under reporting total hours of regular or overtime work performed, classifying workers at a lower wage job than the work they are actually performing, such as listing a worker as a “general laborer” who is actually working as a “backhoe operator” and who should be paid at a higher hourly rate.

Violations of prevailing wage or other labor requirements most often surface as the result of monitoring of payroll records or through a specific complaint by a construction worker. In either instance, the Community is responsible for investigating and documenting the alleged violation. If a violation is evident, the Community should first work with the contractor on an informal basis to resolve the problem and allow a reasonable time for correction. Where the contractor refuses to address the violation or continues to violate the labor requirements, the appropriate state or federal agency should be promptly notified of the violation in writing. The contractor should be informed that an unresolved prevailing wage violation could result in monetary penalties and make the contractor ineligible work on state or federal public works construction projects in the future.

Community officials can assign these oversight duties to a local staff person, such as a local planner or public works supervisor, or may contract with a grant management consultant or engineer to perform these tasks. The Project Engineer is not responsible for assuring compliance with labor and prevailing wage requirements. However, some communities have contracted with their Project Engineer to provide this additional service. Compensation for these additional professional services would have to be negotiated between the Community and the Project Engineer. If this alternative is selected by the Community, day-to-day oversight would be done by the Project Engineer’s RPR.

If a state or federal agency is providing funding for the project, it will likely have additional specific guidance for conducting payroll reviews and employee interviews. Both the CDBG and TSEP grant administration manuals include guidance for local officials on these procedures.

## **15. Delivery of Materials and Payment for Materials**

On large projects, material storage and payment for materials on-hand is an important item, and needs to be discussed in detail. Recall that earlier, it was stated that the Notice of Award sometimes authorized the Contractor to order materials. Often this is not allowed until a Notice to Proceed has been issued. **Materials are usually not ordered until a Notice to Proceed has been issued simply because, until the time the Agreement has been signed by the Community, the Contractor has no guarantee that he or she will be paid for the materials.**

On almost any public facility project, the Contractor will have ordered all of the materials for the project, and instructed the supplier to hold off shipping the order until the Agreement is signed.

This is done to insure that materials are available and will be on-site when the Contractor needs them. The availability of materials is also important to the Contractor when he or she prepares the schedule for the project. Some specialty items, such as pumps, may have a long delivery period, sometimes extending for months. Expected delivery time is therefore important to the Contractor, the Community and the Project Engineer in scheduling their respective work forces.

The Contractor will usually have made arrangements for a materials yard or warehouse to store materials until it is time for installation. **It is the Contractor's responsibility to provide a safe and secure storage area for the material, not the Community.**

The purchase of materials represents a major expenditure by the Contractor. **It is customary for the Community to pay the Contractor for Materials on Hand with the first progress payment.** The Community should be very careful when making a Materials on Hand payment for a number of reasons. **If any material is being stored by a supplier on the supplier's property, it should not be paid for because the Contractor does not have possession of the material.** There have been cases in the past where a supplier's inventory has been confiscated, or a supplier has declared bankruptcy and their assets frozen. The Community then owns materials that it cannot get access to until the assets of the supplier are released by a court.

If the Project Engineer is providing construction administration services, he or she should inventory all material arriving on the site, inspecting it for damage and logging the material delivered. The Project Engineer, or most likely the RPR, will advise the Project Engineer of the number and dollar value of the Material on Hand that should be paid to the Contractor. **It is advisable that only materials approved by the Project Engineer and material for which invoices are provided be paid for by the Community.** Many communities question the possibility of double payment for materials. This is a valid question that deserves explanation here.

When materials arrive on the site, the RPR logs the material and the material cost. The Community then pays the Contractor the amount approved by the Project Engineer for the "raw" materials. As the material is incorporated into the Project, the amount paid for the "raw" materials is deducted from the Contractor's pay estimate and included in the amount paid for the "furnishing and installing" of a particular work item.

For example, the Contractor submits a Materials on Hand claim for 100 feet of 6-inch pipe. The unit cost for the pipe delivered to the storage yard is \$2.00 per foot. The Contractor submits a claim for \$200.00 for Materials on Hand that the Community pays. In the Agreement, the Contractor stated that he or she would "furnish and install" the 6-inch pipe for \$15.00 per foot. Estimate time rolls around and the Contractor submits a pay request for the installation of 50 feet of the 6-inch pipe. The value of the work installed is \$750.00. In preparing the pay request, the RPR and the Project Engineer review the request and deduct \$100.00 from the request because the raw material has already been paid for by the Community. The net payment to the contractor is then \$650.00.



Pay estimates for Material on Hand are usually accounted for on a “declining balance” type spreadsheet. An example of a Pay Estimate with Materials on Hand included is shown in Exhibit 13.

## **16. Alternate Materials**

During the design phase of your project, the Project Engineer selected certain materials and equipment that were needed to provide the Community with a finished project that would perform according to your needs and expectations. However, some funding organizations have required the Community to include an “or equal” provision in the bidding documents. This “opens up the flood gates” by allowing anyone who thinks their product is equal or superior to the product specified to submit their material or equipment for inclusion in the project. The review required for an “or equal” product can range from a few minutes to several days, depending on the complexity of the component. The Project Engineer could, to some extent, control the flood of “or equal” submittals by requiring pre-qualification before the bid. Even this provision often resulted in the Project Engineer having to spend time not originally budgeted to review the submittals<sup>1</sup>.

## **17. Submittal and Approval of Shop Drawings**

**“Shop drawings” are detailed renderings of material or equipment that will be supplied for the project that require the review of the Contractor and the Project Engineer prior to their fabrication and shipment.** An example of a shop drawing could be a steel reinforcing manufacturer's detail drawings for a bridge connection, or a pump manufacturer's submittal of a specific pump along with its performance data and installation details. Shop drawings are crucial to the completion of a project and must be reviewed in a rather tight time frame.

**Because of the number of shop drawings usually submitted on a project, it is recommended that the Contractor be required to review and sign off on the shop drawings prior to submitting them to the Project Engineer for review.** By making this a provision of the Agreement, the Project Engineer is reviewing only those shop drawings that pertain to the project at hand, not a submittal that has accidentally found its way into this project.

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<sup>1</sup> The U.S. First Circuit Court of Appeals affirmed a decision handed down by the U.S. District Court in the *Whitten Corvys Puddock, Inc.* suit which guarantees the specifier's (engineer or architect) authority to define specifications on federal projects. The U.S. Supreme Court also backed up the decision and has refused to hear further appeals. In this ruling, the court has said that an engineer or other specifier writing specifications with brand names only is not in violation of antitrust law. The court stated that trained professionals making such decisions know what products best serve their clients needs.

The court ruled that unspecified suppliers can qualify as “or equal” to a brand name listed only when the specifier chooses to waive the specifications or authorizes a supplier to bid. Thus the Contractor cannot decide what other suppliers are “or equal” to the brand specified

The Project Engineer will review the shop drawings for compliance with the specifications only, but is not responsible for the means or methods that the Contractor will employ for the installation of the material or equipment.

In order to preclude a Contractor from claiming the Project Engineer has taken too long in shop drawing review, and thus causing the Contractor to over run the contract time, the Project Engineer usually maintains a Shop Drawing Log that lists the date the shop drawing was received, the date the shop drawing was returned to the Contractor and the action taken on the shop drawing.

## **18. Manufacturer's Operation and Maintenance Data and Start-Up Services**

On complex projects such as treatment plants, pump stations, etc., operation and maintenance data that will be used by the Community in the future are required to be furnished by the Contractor in sufficient quantity to allow the Project Engineer to assemble an Operations and Maintenance (O & M) Manual. The timing and delivery of these documents should be thoroughly understood by all parties involved.

In addition to operation and maintenance literature, the Agreement often requires the manufacturer to provide start-up services for specialized equipment. This service must be scheduled with the start up of the facility. Community officials and their staff need to be aware of the start-up schedule so that the appropriate personnel can be present to receive instruction as to the operation and maintenance of the equipment.

## **19. Extra Work and Change Orders**

During the course of construction, it may be necessary for the Contractor to perform work over and above the work required in the Agreement. In these cases, the Project Engineer will recommend to the Community that a Change Order be issued to the Contractor authorizing the Contractor to perform the extra work. No extra work can be paid for until the Change Order has been executed by the Community, Contractor and Project Engineer. In some state or federally funded projects, the funding agency representative must also review and approve or even sign the Change Order. Local officials should always consult any federal or state funding agency participating in the project before proceeding with a Change Order.

An example of extra work may be the removal of an abandoned underground structure that was not known to exist at the time the design was completed. Compensation for a Change Order can take many forms such as a lump sum, time and materials, etc. The Project Engineer will work with the Contractor to establish a fair price for this extra work.

Sometimes, however, it is not economically feasible or practical to wait for all of the necessary paper work to be completed before a Contractor can correct the situation that would result in a Change Order. In this case, the Project Engineer, through the RPR, can issue a Work Directive Change or Field Order to the Contractor directing the Contractor to continue. The Change Order and Work Directive Change is shown in Exhibits 15 and 16.

Change Orders and Work Directive Changes can result in the extension of contract time due to the fact the work required may require additional time by the Contractor to complete the work. The issuance of a Work Directive Change will always result in a Change Order at a later date. The Project Engineer and the RPR will work closely with the Community whenever a Work Directive Change is to be issued.

“Extra work” is work that was not an original part of the Agreement and that does not have a direct bearing on the project, but “would be nice.” Community officials can request that the Contractor do the extra work for a negotiated price. **Beware that asking the Contractor to perform extra work may result in the granting of additional contract time since the extra work has the potential of delaying some of the Contractor's previously scheduled operations.**

## **20. Equipment to be Used by the Contractor / Haul Roads**

**During the pre-construction conference, the equipment to be used by the Contractor should be discussed.** Some local streets were not designed to withstand the weight and loads that may be imposed by the Contractor's heavy equipment. **By discussing the type and weight of the proposed equipment, access and haul roads can be designated as the routes that the Contractor will use when moving equipment.**

By setting forth these restrictions at the pre-construction conference, both the Community and the Contractor will not have to discuss damage to existing roads and traveled ways at the end of the project. (It is a good idea to discuss access and haul roads at the pre-bid conference so that the Contractor cannot claim that the haul roads imposed by the Community have resulted in unanticipated costs to the Contractor and that he or she is entitled to additional compensation for restrictions placed on them after the bid).

## **21. Safety Regulations**

**It is the sole responsibility of the contractor to provide a safe working environment of all parties to the contract.** The Project Engineer is not responsible for the Contractor's means or methods employed on the project. However, the Engineer should inform the community of any conditions that he or she considers to be unsafe. Only the Community can stop work on the project. Anyone suspecting that the operations of the Contractor present an unsafe working condition can notify the U.S. Occupational Safety and Health Administration (OSHA). The Montana office of OSHA is in Billings and can be reached at telephone number 1-800-488-7087.

## **22. Documentation of Preexisting Conditions**

**Prior to construction, your Project Engineer should document the existing conditions of the project site, adjoining and/or adjacent structures, fences, landscaping, sidewalks, curbs, etc. The best way to do this is with the use of still and video photography.** It is becoming increasingly necessary to document preexisting conditions to ward off claims made by persons who claim to have suffered damage as a result of project construction activities. For example, project engineers and communities have often seen claims come from citizens stating



that a contractor drove heavy equipment over their driveway and broke it. A dated photograph and video tape showing the condition of the property prior to construction has saved thousands of dollars. This type of documentation has also been used to verify that a contractor did cause damage and should be responsible for repairs. A few hundred dollars in film or videotape are well worth the expense when considering the potential cost for repairs and hard feelings that could result from disputes.

Most contractors these days compile their own documentation of preexisting conditions. Often a question can be resolved in a matter of minutes by consulting this information.

## **I. CONSTRUCTION ADMINISTRATION**

"Construction administration" is the service that will be provided by the Project Engineer during the construction phase. Now that construction is starting, there are five major areas that we need to consider:

- ☐ Shop drawings and equipment-materials submittal
- ☐ Periodic site visits by the Project Engineer
- ☐ The Resident Project Representative
- ☐ Independent testing services
- ☐ Public Relations

### **1. Shop Drawings and Equipment-Material Submittal**

Shop drawings are not all submitted at the beginning of the project simply because some manufacturers require time to prepare them once they have received a confirmed order from the Contractor. During the course of the project, the Project Engineer will be reviewing shop drawings and equipment-material submittals as they arrive. Once these submittals are reviewed, they are distributed to the RPR and the Contractor for incorporation into the project and, if necessary, into the Operation and Maintenance Manual.

### **2. Periodic Site Visits by the Project Engineer**

As construction on the project progresses, the Project Engineer will make periodic visits to the site to review the work completed by the Contractor. These visits are in addition to the observations of the RPR. Community officials usually like to meet with their Project Engineer during these visits to get an update on their project and to discuss various aspects of the project. Some communities prefer to have their Project Engineer make a presentation at a regularly scheduled meeting so the entire council or commission can be brought up to date and ask questions concerning the project. This is also a good opportunity to get some local media coverage about the project since the media usually attends regularly scheduled meetings.

### **3. Resident Project Representative (RPR)**

The RPR (previously referred to as the "on-site inspector"), is the Project Engineer's "eyes and ears" on the project. He or she has experience in the construction of projects similar to yours and observes the Contractor's work and progress during construction. Often, the RPR is not a

licensed professional, but a highly trained and experienced technician. The RPR cannot make design changes, but can advise the Project Engineer. Nor can the RPR relax or modify the project requirements of specifications. The RPR does have quite a bit of influence over the Contractor in that the RPR essentially controls the "checkbook." **Until the RPR is satisfied that the Contractor has completed the work in accordance with the plans and specifications, the RPR will not recommend payment for that work.** It is like saying to the Contractor "you can practice as much as you want, but when it conforms to the contract documents, you will be paid."

**The RPR cannot direct the Contractor, and for that matter, neither can the Project Engineer. It is entirely up to the Contractor to determine the means and methods that will be employed to complete the project. If the RPR, the Project Engineer or the Community, directs the Contractor, the Contractor is immediately relieved of any responsibility for that portion of the work, and the party doing the direction assumes the liability.** The payment for work completed is the only tool the Community and the Project Engineer have to insure that the work is completed in accordance with the contract documents. If the work completed is not in accordance with the plans and specifications, the Project Engineer should not recommend payment for that work. As the Community, you must understand this principle. If you are in doubt, consult with your attorney.

Let's return to the safety issue for a moment. Recall that it is the sole responsibility of the Contractor to provide a safe working environment for people working on the project. Now suppose the RPR sees a flagrant violation of safe working conditions. He cannot stop the Contractor's work in progress. **Only the Community can stop work on the project.** The reason for this is that in stopping the Contractor from working, the Community is affecting his completion time. If it is ever necessary to stop work on a project due to a safety concern or other violation, the Contractor's claim for additional compensation can usually be denied. There are obviously other reasons that the Community may want to stop work until a concern is satisfied. For example, if the work site is safe, but the exposure of the general public to harm is clearly obvious. The Community has every right to stop the work if, after consultation with the Contractor through either the RPR or the Project Engineer, the Contractor ignores your complaint and continues working. This is a very touchy area and the Community's attorney should be involved in any decision to stop work.

#### **4. Independent Testing Services**

Most project engineers utilize the services of an independent testing firm to ascertain the conformance of materials such as soil compaction, concrete, asphaltic concrete, etc., with the specifications. Independent testing firms are usually used for two reasons:

- ❑ First, the cost of the testing equipment and trained staff is prohibitive for each design firm to operate and maintain.
- ❑ Second, the use of an independent testing firm provides an unbiased third party for the project.

The testing firm provides the results of the tests to the Project Engineer. It is up to the Project Engineer to make the decision as to whether or not the material conforms to the specifications.

## **5. Public Relations**

There is an understandable tendency for the local officials and staff of any community to get involved in the day-to-day details of getting their public facility project built. It is easy to forget that it is important to keep local citizens up to date on what is going on, too. Community officials and staff should keep the public informed about the project as it proceeds. On many local public facility projects, there are often plenty of “sidewalk superintendents” who are always eager to convey their impression to friends and neighbors. **The best way for local officials and staff to stay ahead of the “rumor mill” is to continually make efforts to keep the public informed about what is going on and why.**

Public facility projects are usually quite visible to your constituents. Utility installation and replacement projects can cause hardships on local residents. Because of this, **it is of vital importance to keep the general public well informed as to street closures, delays that can be expected, and the general status of the project.** A good public relations program to keep the public informed needs to be initiated prior to the commencement of construction and continued throughout the project.

Publicity and citizen participation efforts have to be tailored to the situation in each community. One approach followed in many communities is to have the Project Engineer or manager provide periodic progress reports to the city or town council. This is also a good opportunity to get local media coverage about your project since the media usually attends regularly scheduled meetings. If a local reporter does not attend the meeting, copies of the Project Engineer's progress report can be provided to the local newspaper or radio station. Another option would be to have the members of the city council make brief presentations to local civic groups or service organizations to bring them up to date.

Keeping people informed can help accomplish other goals related to your project, too. Most public facility projects will result in an increase in user charges or fees. Continued publicity regarding the project helps local citizens understand why these costs must go up and makes them feel like part of the process, rather than just being on the receiving end of a higher bill or fee. Publicity also helps inform people regarding the complex issues their local governments are facing in trying to provide adequate public facilities.

A long standing requirement for many federal and state public facilities funding programs is that the community erect a sign on or near the project site which describes the purpose of the project and the various funding sources. Various agencies such as the State Revolving Fund (SRF) loan programs and the Department of Agriculture, Rural Development/Rural Utilities Service require that bid specifications contain construction details for project signs including dimensions, size and type of lettering, and color of paint. **Even if not required by a funding agency, communities should use signs to publicize the project and the sources of funding. Publicizing the project helps local citizens feel involved in the project.** A well-done project sign can help generate enthusiasm about your project and give people the feeling that things are happening in the community. It also lets the public know that something worthwhile is being



accomplished with their tax dollars. A project sign does not have to be expensive or professionally done to be effective. The Town of Chester, for example, had a high school shop class paint the sign for their “Chester Northside Water System Improvements Project.”

**Special events, such as a ground breaking ceremony for a new water treatment plant, can be used to let people know what is happening and to generate enthusiasm.** For example, the Town of Culbertson held a ribbon cutting ceremony and open house, complete with hot dogs and soft drinks, to show off the town’s new water treatment plant. The town’s public works staff also conducted guided tours for science classes from local schools to describe how the new plant operated to provide safe drinking water for the community. Of course, these students told their parents what they had seen and increased community awareness of the project.

Unfortunately, no discussion of how to deal with the public would be complete without mentioning dealing with complaints. Though local officials are doing their best to improve their community through their public facility project, human nature seems to guarantee that some citizen, at some time, will probably be dissatisfied with some aspect of the project. A taxpayer may feel that the proposed project is poorly designed or too expensive or that the new water or sewer rate is too high. **As a rule of thumb, the more promptly community officials or the project manager can investigate the basis for a complaint and try to offer a reasonable solution, the better.** It is human nature for the citizen lodging the complaint to feel that they are being ignored if the community does not respond with at least an immediate telephone call to investigate the situation. The longer the time before they are contacted, the greater will be their frustration or anger.

The general public needs to know who to contact with their complaints or questions. Community officials and staff are usually the ones who get the calls. Local officials or staff should either give the caller the telephone number of the RPR, or write down the name of the caller, the time of the call and the nature of the complaint or question. This information should be given to the RPR who will investigate the issue and, if appropriate, order the Contractor to make any necessary repairs to correct a problem. In any event, the RPR should report back to the Community with the status of the complaint or question.

## **J. CONSTRUCTION RECORDS**

The maintenance of construction records is a very important function of the Project Engineer, the RPR and the Contractor. The importance of keeping complete and accurate records during construction cannot be over-stressed, both from a claims standpoint and a future operations standpoint. Often, funding agencies require specific records as part of their program, such as for determining compliance with prevailing wage requirements. How are these records kept and who is responsible for keeping them?

### **1. Construction Diary**

**The RPR and the Contractor’s Project Superintendent keep a daily construction diary.** These diaries contain a synopsis of the day’s events, the weather conditions, temperature throughout the day, the work completed, problems encountered, materials installed, visitors to

the site, compressed minutes of meetings, etc. Diaries are the most complete record of the project.

Diaries are also used to record disputes or disagreements. In these cases, the RPR will write down his or her interpretation of the dispute and ask the Project Superintendent to read and sign the diary. The Project Superintendent is not required to sign the diary and should be given the opportunity to write his or her own interpretation on the next page. Both parties, after reading each other's entries, should sign the daily diary. This is the best and most accurate record of events that can be used by the Contractor, the Project Engineer and the Community in settling disputes. Without the diary, things are left to memory, which can sometimes be conveniently forgotten!

## **2. Maintenance of Record Drawings**

**"Record Drawings"** are drawings that represent the constructed project. A frequently misused term for record drawings is "As Built." "As Built" infers that each and every element of the project was constructed exactly as shown. Rarely are all dimensions held to exactly as those shown on the design drawings. "Record Drawings," on the other hand, indicate a record of items actually observed during construction of the project. Underground structures or utilities encountered during construction that required a slight change in grade or alignment are recorded daily on the project record drawings.

**The location of improvements that will be buried in the ground or hidden behind a wall are extremely important for future maintenance or expansion. Because of the importance of these drawings, the Project Engineer usually requires that the Contractor and the RPR maintain independent sets of record drawings. These sets of drawings are compiled into a final set of record drawings that are given to the Community as a permanent record of the improvements made under this project.** Community officials should take care of their record drawings so that they will be accessible in the years to come should the need arise.

The record drawings will also be used by others interested in installing their improvements near the Community's public facilities. Those most likely to use the drawings are power, gas, electric, telephone and cable TV utilities. Most of their improvements are now being installed underground and they do not want to damage the Community's material or equipment while installing theirs.

## **K. PERIODIC PAY ESTIMATES - CERTIFICATION OF WORK**

We have discussed payments to the Contractor previously in this section. However, we have not discussed the Certification of Work that the Contractor makes to the Community when he or she submits a payment request. Among other things, the Contractor certifies on a pay request that all work for which the Contractor is requesting payment has been completed in conformance with the Plans and Specifications. Thus, the periodic pay estimate, combined with the construction diary and record drawings, provides a fairly accurate time line of the project construction. This may be useful in the future should a problem or a claim arise as a result of the Contractor's work. Certification of pay estimates by the Contractor can help minimize revenge claims by the Contractor at a later date. Exhibit 13 is a sample pay estimate.

## **L. LABOR AND PAYROLL RECORDS**

We previously discussed the need for labor and payroll records that are sometimes required by funding agencies. These records must be maintained by the Community to prove to funding agencies that all workers on the project were compensated at the applicable wage rate.

A prevailing wage file should be maintained which includes the following items:

- ❑ a copy of all applicable wage rate decisions;
- ❑ evidence that prevailing wage provisions were included in bid packages and contracts;
- ❑ telephone notes or correspondence regarding contractor eligibility;
- ❑ a copy of the preconstruction conference minutes;
- ❑ evidence that required prevailing wage notices have been continually posted at the construction site;
- ❑ the contractor's weekly payroll reports (numbered sequentially and the final one marked "Final");
- ❑ evidence that the weekly payroll reports have been promptly reviewed and verified as correct;
- ❑ records of construction worker interviews;
- ❑ evidence of any complaints or violations with supporting documentation; and
- ❑ evidence of the resolution of any complaints or violations.

Most state and federally funded projects are monitored by agency staff during the construction period. Project records may also be audited when the local government entity receives its regularly scheduled financial audit. The financial audit may occur a year or two after the project is completed. Therefore, the Community must maintain the project records, including labor and payroll records, for the required amount of time prior to destroying them. Most federal agencies require that project records be retained for at least three years after the project receives "final closeout." In addition, state law establishes even longer records retention requirements for some local government records. It is always best to contact any funding agency for the project to clear the destruction of project records with the agency before destroying them.

## **M. CONSTRUCTION PROBLEMS**

We would all like to get through a construction project without any problems, but unfortunately that has never happened. Conditions are never totally what we expect them to be or what we were led to believe they are. We will take a look at some of the more common construction problems that occur during a construction project and discuss how they are handled.

### **1. Clarifications, Interpretations and Field Orders**

**"Clarifications" may be required where there are minor discrepancies between the plans and specifications.** An example would be where the plans illustrate an auxiliary fire hydrant valve to be located five feet away from the hydrant, but the specifications indicate that the auxiliary valve is attached directly to the hydrant. **"Interpretations" may be required where descriptive terms such as a "smooth finish," a "workmanlike manner," etc., are concerned.**



In cases such as these, the Project Engineer, through the RPR, will issue written clarifications or interpretations to the Contractor. In most cases, these clarifications and interpretations do not result in any additional time or cost to the Contractor. In other cases, a "Field Order" may be issued to the Contractor directing a change which may result in a small increase or decrease in the contract amount. Field Orders are also used as directives to contractors to remind them of certain contractual responsibilities that are being overlooked. An example of this type of field order could be "clean up the site," or "improve traffic control at the intersection . . . "

## **2. Unforeseen Conditions**

There are times during the course of construction when the Contractor encounters a condition that was unforeseen during the design phase. An example of an unforeseen condition would be the encountering of unstable soil during the installation of a pipeline. Even though the Project Engineer may have utilized the services of an independent geotechnical engineer, it is not possible to test every inch of the pipeline alignment.

Since the Contractor had no knowledge of this unforeseen condition, he or she could not have planned or budgeted the cost required to correct the situation in his or her bid. In this situation, a Work Directive Change, followed by a Change Order, is issued to compensate the Contractor for the additional work required to complete the project. Other examples of unforeseen conditions are the encountering of hazardous waste, petroleum in the soil or groundwater, or a previously unknown or abandoned and forgotten utility line.

## **3. Disputes and Claims**

**"Disputes" are disagreements between the Community and the Contractor.** For example, a Community may not believe that the completed work is in conformance with the specifications. **"Claims" are made by a Contractor when the Contractor believes that extra work has been required or more time is needed to complete the work due to conditions beyond the Contractor's control.**

Sometimes a Contractor and the Project Engineer do not agree or cannot resolve their differences and the Contractor will file a dispute or a claim for additional compensation with the Community. Unfortunately, when a situation like this arises, it takes time to resolve. The best defense the Project Engineer and the Community have against a dispute or a claim is the RPR's daily construction diary, pre-construction condition records and the record drawings. Hopefully you will not have to deal with a dispute or claim on your project, but if you do, your Project Engineer and your attorney will work with you through the process.

## **N. CONCLUDING REMARKS**

This chapter has briefly exposed you to the construction phase of the project. Obviously, each project has different circumstances and each will be handled differently. Also, each Project Engineer may take a somewhat different approach to managing the overall project than the one presented in this manual. Hopefully, the picture of what you can expect has been made somewhat clearer to you through this manual. Remember, your Project Engineer has the

training and experience to guide you through your project. Do not hesitate to consult with your Engineer often.





### **III. CHAPTER THREE: PROJECT CLOSE OUT**

This section deals with those actions taken when the construction phase of your project is close to being completed. There are specific actions that need to be accomplished to finish the project, and once the project is completed the warranty period begins.

**PROJECT CLOSE OUT** covers the following topics:

- ❑ Project Close Out Procedures
- ❑ Warranty Period

#### **A. PROJECT CLOSE OUT PROCEDURES**

Project close out is one of the most important phases of construction administration. Items that will be completed during this phase by the Project Engineer will include the Final Inspection and Punch List, Substantial Completion, Reconciliation Change Order, Final Payment, Contractor Release and Certification, and the Project Engineer's Certification of Record Drawings.

##### **1. Final Inspection and Punch List**

Prior to recommending to the Community that the project is complete and ready to be reviewed by the Community, the Project Engineer prepares a list of project deficiencies or work remaining to be completed and presents this list to both the Contractor and the Community. This list of project deficiencies is known as a "punch list."

The RPR may make many interim punch lists during the course of the project at the request of the Contractor to facilitate completion of the project within the allocated time frame. When the Contractor is confident that the project has been satisfactorily completed and any punch list items complied with, the Contractor will request the Project Engineer inform the Community that the project is ready for final inspection.

The final inspection is designed to walk the Community through the entire project, pointing out the work completed by the Contractor. In essence, the Contractor is "selling" his completed work to the Community. More often than not, Community officials or staff will question some of the Contractor's work or clean up and request that these items be taken care of before the Community will take possession of the project. This is very similar to purchasing a new car or home. There is usually something that the Community wants fixed or spruced up before taking possession. In this case, the Project Engineer will prepare a final punch list and present it to the Contractor. **If the number of items on the final punch list is very small, the Project Engineer may recommend to the Community that a Certificate of Substantial Completion be prepared.**

##### **2. Substantial Completion**

The "Certificate of Substantial Completion" is a very important contract document. **The issue date of the certificate sets the warranty dates, and most important to the Contractor, it**

**releases the Contractor's surety company's obligation to complete the work in the event the Contractor does not or cannot. The Certificate of Substantial Completion also allows the Contractor to bid new work<sup>1</sup>. Therefore, as the Community, you should only sign the Certificate of Substantial Completion when you are comfortable with the project, and when the Project Engineer recommends that the work is substantially complete.**

The Certificate of Substantial Completion contains an area for the Project Engineer and the Community to list minor items that remain to be completed under terms of the contract (see Exhibit 17). This area is usually used for work items such as seeding or landscaping when completion of the work at the time of substantial completion would not be feasible. Pavement replacement is another common item that may appear on the certificate. If the project is completed in the late fall or early winter, conditions will probably not be favorable for seeding, landscaping or the placement of pavement that will last or meet the project specifications. The Project Engineer will be in a position to advise the Community in these types of situations.

**Even though the Community still has the Contractor's Performance and Payment Bonds, the Project Engineer will usually recommend that the Community retain sufficient funds from the Contractor's pay estimate to insure that the work is either completed by the Contractor when conditions are more favorable, or that the Community has enough money remaining in the construction fund to have the work completed by others.** The pay estimate for the work completed and recommended by the Project Engineer up to the date of the Certificate of Substantial Completion should be labeled "SEMIFINAL" if any work or punch list items remain to be completed, and the conditions stipulated in the Certificate of Substantial Completion should be attached to the pay estimate.

By not issuing a Final Pay Estimate, the Community retains control of the Contractor's Performance Bond, and in the event the Contractor does not complete the remaining project items, the Community not only has the funds remaining in the construction fund, but it also has the opportunity to advise the Contractor's surety company that their client has failed to complete his or her work in accordance with the contract. This usually gets the Contractor's attention rather quickly, because bonding and insurance companies do not like to pay for anything. They will apply substantial pressure on the Contractor to complete the work. In addition, the surety company may not allow the Contractor to bid any additional work until the contract is complete.

### **3. Reconciliation Change Order**

At this point, the Contractor has completed all of the punch list items, the Community is satisfied with the Project, and the Contractor is requesting final payment. As part of the Contract, a final balancing change order, often referred to as a "Reconciliation Change Order" (see Exhibit 18) will be prepared in conjunction with the final pay request.

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<sup>1</sup> In most cases, an insurance company limits the total bonding capacity of a Contractor. The Contractor's coverage is like a declining balance. The more work the Contractor has under contract, the less free bonding that is available.

As you will recall, the bid presented by the Contractor and made a part of the contract contains many items that are described as “per each” or “per lineal foot.” Also recall, that the Measurement and Payment section in most contracts states that the price paid per unit will be made on the actual amount installed. This means that your contract is essentially an open-ended agreement. The Reconciliation Change Order adjusts the contract to represent the final quantities that were actually installed, thus changing the contract to a fixed amount. The Reconciliation Change Order also makes the final adjustment in contract time, if any. **The Reconciliation Change Order is signed by the Contractor, the Project Engineer, and the Community indicating agreement on the final contract amount and time. Until the Reconciliation Change Order has been completed and signed by the Contractor and the Project Engineer, the Community should not process the final pay estimate.**

#### **4. Contractor Release and Certification**

Even though a Contractor has provided the Community with Performance and Payment Bonds, there still is a possibility that not all of the suppliers and subcontractors have been paid for their services. The last thing the Community wants to have happen is for a supplier or subcontractor to file a lien against it, demanding payment from the Community for services rendered or material supplied to the General Contractor. **The contract between the Community and the Contractor should require lien waivers from both the Contractor and all of the Contractor's suppliers and subcontractors.** It is critical that the Community have in its possession signed and notarized lien waivers from all of the subcontractors and suppliers in addition to a lien waiver from the General Contractor before final payment is made. Examples of these Lien Waiver forms are shown in Exhibits 19 and 20.

#### **5. Final Payment**

The final payment represents the Community's complete and final payment to the Contractor for the materials supplied and work performed on the project. The Final Pay Estimate looks no different from any other pay estimates that the Community has processed in the course of the project with the exception that it should clearly state that it is the “Final” estimate.

**The Community should not process the Final Pay Estimate until the Contractor and your Project Engineer have signed by Reconciliation Change Order.** The usual procedure that is commonly followed calls for the Project Engineer to present both the Reconciliation Change Order and the Final Pay Estimate to the Community for its consideration. The Project Engineer should go over both the Reconciliation Change Order and the Final Pay Estimate with local officials so the Community has a clear understanding of the final construction cost of the project.

#### **6. Engineer Certification of Record Drawings**

As a usual part of the Community's contract with the Project Engineer, he or she must provide the Community with a set of Record Drawings. The Project Engineer relies on the Contractor's daily record drawings as well as the RPR's records to prepare the official Record Drawings. These drawings represent the best information available as to where improvements have been installed on the project. **The Record Drawings will indicate where changes have been made**



from the original design and show sufficient detail to allow the Community to locate these improvements in the future should maintenance be required or a future connection need to be made.

If a project is subject to approval from the Montana Department of Environmental Quality prior to construction, Record Drawings must also be submitted to that agency. The DEQ requires that the Record Drawings be prepared by a licensed Project Engineer. This is another reason it is important (and mandatory in the case of a public water or sanitary sewer project) that the Project Engineer's representative is on the project on a full time basis. No Project Engineer can comply with the DEQ requirement if he or she has not been on or represented on the project during all phases of construction.

## **B. WARRANTY PERIOD**

Even though the project is complete, the Contractor has removed his equipment from the project site, and the Community's public works staff are operating the new facility, we are still not quite finished with the administrative portion of the project. **Once local officials signed the Certificate of Substantial Completion, the clock starts running on the warranty period. Warranty periods normally extend for one year, because** if any component of the project is going to fail, be it a piece of mechanical equipment or a street patch, it will most likely fail within this period.

The contract between the Community and the Contractor should be specific that for a period of one year from the date of substantial completion, the contractor will repair or replace any defective equipment or workmanship at no cost to the Community. This warranty obviously excludes failures from misuse, "Acts of God," etc..

Potentially, if a Contractor refuses to replace or correct a failed component of the project as required by the contract, the Community has the right to correct the problem and bill the expense to the Contractor. However, if the Contractor is uncooperative, collecting this cost can be problematic but contractors are usually quite responsive to warranty needs and the communities rarely are required to make repairs themselves.

### **1. Eleventh-Month Inspection**

Some funding agencies require an "eleventh-month inspection" of projects they have funded. These inspections usually require an inspection team composed of a representative of the Community, the Project Engineer, a representative of the Contractor, and a representative from the funding agency. **The purpose of this eleventh-month inspection is to review the entire project and insure that any corrective actions required by the Contractor and the Project Engineer are taken care of before the warranty period expires.**

If your project is receiving federal funds, or the funding agency has special requirements such as this, be sure that both the Community and the Project Engineer understand these requirements from the onset of the project, as these inspections require time and expense of both local officials and the Project Engineer and, as a result, have a cost associated with them.

## **2. One-Year Performance Evaluation**

Some federal funding agencies also require a one-year performance evaluation of the project. Your Project Engineer should also be well aware of this requirement. Again, as with the eleventh-month inspection, these activities involve additional time and expense.

## **3. Correction Of Non-Acceptable Work**

**In the event non-acceptable work is discovered during one of these inspections, or at any time during the warranty period, the first person to notify is your Project Engineer.** Correction of non-acceptable work after the warranty period can turn into a problem if the Contractor chooses to take the position that it is past the warranty period, and therefore is not his or her responsibility. Depending on the magnitude of the problem, this could lead to a lengthy court battle in which there are no real winners.

Sections 13.11 through 13.14 of the General Conditions to the contract between the Community and the Contractor explain in detail the avenues that the Community can explore to correct non-acceptable work and still remain within the limits of the contract.

In closing, the best advice available to the Community when it is dealing with public facility projects is to rely on the Project Engineer. If the engineer cannot answer questions directly, he or she will be able to direct local officials to the correct person or agency to deal with the problem. It is often better to let the Project Engineer handle these problems, since he or she has an objective view of the situation and is generally better equipped to explain the situation.





# ***EXHIBITS***



EXHIBIT 1

SECTION 00020  
INVITATION TO BID

Separate sealed bids for construction of \_\_\_\_\_  
will be received by \_\_\_\_\_ at the office of  
\_\_\_\_\_ until \_\_\_\_\_ local time on  
\_\_\_\_\_, and then publicly opened and read aloud.

The project consists of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The contract documents consisting of Drawings and Project Manual may be examined or obtained at the office of \_\_\_\_\_ in accordance with Article 2.01 of Instructions To Bidders. Required deposit is \$ \_\_\_\_\_ per set, which is not refundable.

In addition, the Drawings and Project Manual may also be examined at the following locations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

There will be a Pre-Bid Conference at the office of \_\_\_\_\_ at \_\_\_\_\_ o'clock on \_\_\_\_\_. Interested CONTRACTORS are encouraged to attend.

CONTRACTOR and any of the CONTRACTOR's subcontractors doing work on this project will be required to obtain registration with the Montana Department of Labor and Industry (DLI). Forms for registration are available from the Department of Labor and Industry, P.O. Box 8011, 1805 Prospect, Helena, Montana 59604-8011. Information on registration can be obtained by calling 1-406-444-7734. CONTRACTOR is not required to have registered with the DLI prior to bidding on this project, but must have registered prior to execution of the Construction Agreement. All laborers and mechanics employed by CONTRACTOR or subcontractors in performance of the construction work shall be paid wages at rates as may be required by the laws of \_\_\_\_\_ (County) and the state of Montana. The CONTRACTOR must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or national origin.



Each bid or proposal must be accompanied by a Certified Check, Cashier's Check, or Bid Bond payable to \_\_\_\_\_, in an amount not less than ten percent (10%) of the total amount of the bid. Successful BIDDERS shall furnish an approved Performance Bond and a Labor and Materials Payment Bond, each in the amount of one hundred percent (100%) of the contract amount. Insurance as required shall be provided by the successful BIDDER(s) and a certificate(s) of that insurance shall be provided.

This project is funded in part or in whole with grant/loan funding from \_\_\_\_\_

Award of the project will be contingent upon receiving funding and award concurrence from \_\_\_\_\_

No bid may be withdrawn after the scheduled time for the public opening of bids, which is \_\_\_\_\_  
.m. local time \_\_\_\_\_, 20\_\_\_\_\_.

The right is reserved to reject any or all proposals received, to waive informalities, to postpone the award of the contract for a period of not to exceed sixty (60) days, and to accept the lowest responsive and responsible bid which is in the best interest of the OWNER.

\_\_\_\_\_, is an Equal Opportunity Employer.

Published at \_\_\_\_\_, Montana, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
(Title)

Address: \_\_\_\_\_

\_\_\_\_\_, Montana 59\_\_\_\_\_

## EXHIBIT 2

### SECTION 00100 INSTRUCTIONS TO BIDDERS

#### ARTICLE 1 - DEFINED TERMS

1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and the Supplementary Conditions. Additional terms used in these Instructions To Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

A. "Bidder" --The individual or entity who submits a Bid directly to OWNER.

B. "Issuing Office"--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

C. "Successful Bidder"--The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluations as hereinafter provided) makes an award.

#### ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the Invitation to Bid may be obtained from the Issuing Office . The deposit will not be refunded.

2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither OWNER nor ENGINEER assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 OWNER and ENGINEER in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

#### ARTICLE 3 - QUALIFICATION OF BIDDERS

3.01 To demonstrate Bidder's qualifications to perform the Work, within five (5) days of OWNER's request, Bidder shall submit written evidence, such as financial data, previous experience in performing comparable work, present commitments and other such data as may be called for in the Special Provisions.

In determining the lowest responsible bid, the following elements will be considered: whether the BIDDER involved (a) maintains a permanent place of business; (b) has adequate plant and equipment to do the work properly and expeditiously; (c) has a suitable financial status to meet obligations incident to the work; and (d) has appropriate technical experience.

Each BIDDER may be required to show that former work performed by him has been handled in such a manner that there are no just or proper claims pending against such work. No BIDDER will be acceptable if he is engaged on any other work which impairs his ability to finance his contract. The BIDDER shall demonstrate his ability by meeting all requirements herein stipulated, if asked for them.

#### **ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA AND SITE**

##### **4.01 Subsurface and Physical Conditions**

###### **A. The Special Provisions identify:**

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Bidding Documents.
2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.02.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.02 of the General Conditions has been identified and established in paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

##### **4.02 Underground Facilities**

A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to OWNER and ENGINEER by owners of such Underground Facilities, including OWNER, or others. OWNER and ENGINEER do not assume responsibility for the accuracy or completeness thereof unless expressly provided otherwise elsewhere.

##### **4.03 Hazardous Environmental Condition**

A. The Special Provisions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that ENGINEER has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided

in the Special Provisions has been identified and established in paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 4.06 of the General Conditions.

4.05 Upon request, OWNER will provide Bidder access to the site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill and compact all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies..

4.06 Reference is made to the Special Provisions for the identification of the general nature of other work that is to be performed at the Site by OWNER or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted. On request, OWNER will provide to each bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such work.

4.07 It is the responsibility of each Bidder before submitting a Bid to:

A. Examine and carefully study the Bidding Documents including any Addenda and the other related data identified in the Bidding Documents;

B. Visit the site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work; including but not limited to those general and local conditions affecting transportation, disposal, handling and storage facilities, availability of labor, water, power, roads, climactic conditions and seasons, physical conditions at the work Sites and project area as a whole, job site topography and ground conditions, equipment and facilities needed preliminary to and during work prosecution,

C. Become familiar with and satisfy Bidder as to all Federal, State and Local Laws and Regulations that may affect cost, progress, or performance of the Work;

D. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except underground Facilities) which have been identified in the Special Provisions as provided in paragraph 4.02 of the General Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site



which have been identified in the Special Provisions as provided in paragraph 4.06 of the General Conditions;

E. Obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

F. Agree at the time of submitting its bid that no further examinations, investigations, exploration, tests, studies or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;

G. Become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicted in the Bidding Documents;

H. Correlate the information know to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.

I. Promptly give ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by ENGINEER is acceptable to the Bidders; and

J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences or procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in Bidding Documents and the written resolutions thereof by ENGINEER are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

## **ARTICLE 5 - PRE-BID CONFERENCE**

5.01 A pre-Bid conference will be held at the time and place listed in the Invitation To Bid. Representatives of OWNER and ENGINEER will be present to discuss the project. Bidders are encouraged to attend and participate in the conference. ENGINEER will transmit to all prospective bidders of record such Addenda as ENGINEER considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

## **ARTICLE 6 - SITE AND OTHER AREAS**

6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easement for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

## **ARTICLE 7 - INTERPRETATIONS AND ADDENDA**

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to ENGINEER in writing. Interpretations or clarifications considered necessary by ENGINEER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by ENGINEER as having received the Bidding Documents. Questions received less than ten (10) days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct or change the Bidding Documents as deemed advisable by OWNER or ENGINEER.

7.03 Any addenda issued during the time of bidding, or forming a part of the Contract Documents loaned to the Bidder for the preparation of his proposal, shall be covered in the Bid and shall be made a part of the Agreement. Receipt of each addendum shall be acknowledged in the Bid. Any Bid in which all issued addenda are not acknowledged will be considered incomplete and will not be read.

## **ARTICLE 8 - BID SECURITY**

8.01 A Bid must be accompanied by Bid Security made payable to OWNER in an amount of ten percent (10%) of Bidder's maximum Bid price and in the form of cash, a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, or a Bid Bond (on a form attached if a form is prescribed) issued by a surety authorized to do business in Montana meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions. Bid Bonds shall be countersigned by a Resident Montana Agent.

8.02 The Bid Security of the Successful BIDDER will be retained until such BIDDER has executed the Contract Documents and furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within fifteen (15) days after the Notice of Award, OWNER may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of (7) seven days after the Effective Date of the Agreement or (61) sixty-one days after the Bid opening, whereupon Bid Security furnished by such Bidders will be returned.

8.03 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after Bid opening.

## **ARTICLE 9 - CONTRACT TIMES**

9.01 The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in the Agreement.

## **ARTICLE 10 - LIQUIDATED DAMAGES**

10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

## **ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS**

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Bidding Documents that a substitute or "or equal" item of material or equipment may be furnished or used by CONTRACTOR if acceptable to ENGINEER, application for such acceptance will not be considered by ENGINEER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by ENGINEER is set forth in Paragraphs 6.05 of the General Conditions and may be supplemented in the General Requirements or Special Provisions.



## **ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS AND OTHERS**

12.01 If the Special Provisions require or the OWNER would request the identity of certain Subcontractors, Suppliers, individuals or entities to be submitted to OWNER in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall will within five (5) days after Bid opening submit to OWNER a list of all such Subcontractors, Suppliers, individuals or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by OWNER. If OWNER or ENGINEER after due investigation has reasonable objection to any proposed Subcontractor, Supplier, individual or entity OWNER may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid .

12.02 If the apparent Successful Bidder declines to make any such substitution, the OWNER may determine such Bidder to be non-responsive and reject the Bid. Declining to make requested substitution will not constitute grounds for forfeiture of the Bid Security of any Bidder. Any Subcontractor, Supplier, individual or entity so listed and against which OWNER and ENGINEER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER and ENGINEER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

12.03 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

## **ARTICLE 13 - PREPARATION OF BID**

13.01 The Bid Form is included with the Bidding Documents; additional copies may be obtained from the ENGINEER. Bids shall be strictly in accordance with the prescribed form. Any modifications thereof or deviations therefrom may be considered as sufficient cause for rejection. Bids carrying riders or qualifications to the Bid being submitted may be rejected as irregular.

13.02 All blanks on the Bid Form shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each Bid item listed therein, or the words "No Bid", "No Change", or "Not Applicable" entered.

13.03 Bids by a corporation must be executed in the corporate name by the president or a vice-president or other corporate officer who is authorized to bind the corporation, and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature. The Bid of a corporation, which is signed by a person other than a corporate officer, must be accompanied by evidence of authority to sign.

13.04 A bid by a partnership shall be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.



13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The State of formation of the firm and the official address of the firm must be shown below the signature.

13.06 A Bid by an individual shall show the Bidder's name and official address.

13.07 A Bid by a Joint Venture shall be executed by each Joint Venturer in the manner indicated on the Bid form. The official address of the Joint Venture must be shown below the signature.

13.08 All signatures are to be in ink and names must be typed or printed below the signature. The title of the person(s) executing the Bid shall be clearly indicated beneath the signature.

13.09 The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form). Bids in which all issued addenda are not acknowledged will be considered incomplete and will not be read.

13.10 The address and telephone number for communications regarding the Bid must be shown.

13.11 Current Montana Contractor's registration number, if any, must be shown.

## **ARTICLE 14 - BASIS OF BID; EVALUATION OF BIDS**

### **14.01 Bids.**

A. Bidders shall submit a Bid on a unit price and/or lump sum basis for each item of Work listed in the Bid schedule as provided in the Bid form. The Bid will not be considered unless the Bid Form contains prices for all unit price and/or lump sum items, and alternates, as shown on the Bid Form. Bids and totals shall be shown legibly in their proper locations. The total amount of the Bid shall be legibly written and numerically presented in the proper places and the Bid Form shall be manually signed.

B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit price will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

## **ARTICLE 15 - SUBMITTAL OF BID**

15.01 Each prospective Bidder is to execute one copy of the Bidding Documents. The Bid form is to be completed and submitted with the Bid security along with additional documents, if any, as identified in the Special Provisions.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Invitation to Bid and shall be enclosed in an opaque sealed envelope, plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid Security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED". A mailed bid shall be addressed to the address shown in the Invitation To Bid.

15.03

A. The Bid will not be considered unless accompanied by proper Bid Security in accordance with Article 8 of these Instruction to Bidders.

B. Alternative Bids will not be considered unless called for.

C. Bids by telephone, telegraph, fax or other telecommunication systems will not be considered.

## **ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BIDS**

16.01 Bids may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids as called for in the Invitation to Bid. Requests for modification or withdrawal must be written and must be signed in the same manner and by the same person(s) who signed the Bid.

16.02 If, within twenty-four hours after Bids are opened any Bidder files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, if the Work is rebid or negotiated, that Bidder will be disqualified from further bidding on the Work.

## **ARTICLE 17 - OPENING OF BIDS**

17.01 Bids will be opened at the time set for opening in the Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

## **ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

18.01 All bids will remain subject to acceptance for sixty (60) days after the day of the Bid opening, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

## **ARTICLE 19 - AWARD OF CONTRACT**

19.01 OWNER reserves the right to reject any and all Bids, including without limitation, nonconforming, nonresponsive, unbalanced or conditional Bids. OWNER further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsive. OWNER also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. OWNER reserves the right to reject the Bid of any Bidder if OWNER believes it would not be in the best interest of the Project to make an award to that Bidder whether because Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by OWNER.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of the Bidder and the rejection of all Bids in which that bidder has an interest.

19.03 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice To Proceed.

19.04 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Special Provisions.

19.05 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals or entities to perform the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, OWNER will award the Contract to the responsible bidder whose Bid, conforming with all material terms and conditions of the Bidding Documents, is lowest price, in the best interest of the Project, and other factors considered. The OWNER reserves the right to accept or reject the Bids, or portions of Bids if denoted in the Bid as separate schedules, and to award more than one Bid or schedule for the same Bid if any of the aforementioned combination of Bids or schedules will be in the best interest of the OWNER. The OWNER reserves the right to cancel the award of any Agreement at any time before the complete execution of said Agreement by all parties without any liability against the OWNER.

## **ARTICLE 20 - CONTRACT SECURITY**

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to Performance Bond, Payment Bond, and certificates of insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds and insurance.

## **ARTICLE 21 - SIGNING OF AGREEMENT**

21.01 When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within fifteen (15) days thereafter, Successful Bidder shall sign and deliver at least three (6) counterparts of the Agreement and attached documents to OWNER. Within fifteen (15) days thereafter OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings and Specifications.

## **ARTICLE 22 - STATE LAWS AND REGULATIONS**

22.01 All applicable laws, ordinances and the rules and regulations of authorities having jurisdiction over construction of the project shall apply to the Contract throughout. State laws and ordinances which the CONTRACTOR must comply with, include but are not limited to, those involving workmen's compensation insurance, contractor registration, employment preference to Montana contractors and Montana residents, and gross receipts tax.

End of Section 00100





**SECTION 00300  
BID FORM**

**PROJECT IDENTIFICATION:**

---

(Name of Project)

---

(Location)

---

(If applicable, Project or portion of Project for which Bid is submitted)

**CONTRACT IDENTIFICATION AND NUMBER:**

---

(Title, Number, etc. that appears elsewhere in Bidding Documents.)

**THIS BID SUBMITTED TO:**

---

(Organization)

---

(Street; P.O. Box)

---

(City)

(State)

(Zip Code)

**1.01** The undersigned Bidder proposes and agrees if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents, to perform and furnish all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**2.01** Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid, and Instruction to Bidders, including without limitations those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for sixty (60) days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.

3.01 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged the following Addenda:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Special Provisions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of a Hazard Environmental Condition, if any, which has been identified in the Special Provisions as provided in paragraph 4.06 of the General Conditions.

E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of the Work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Bidding Documents.

I. Bidder has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to Bidder .

J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

**4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

The BIDDER certifies tha' no official of the OWNER, ENGINEER or any member of such officials immediate family, has direct or indirect interest in the pecuniary profits or Contracts of the BIDDER.

**5.01** The Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

#### UNIT PRICE SCHEDULE

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
TOTAL ESTIMATED BID PRICE				\$ _____	(Figures)
TOTAL ESTIMATED BID PRICE				_____	(Words)

{ or }

#### LUMP SUM BID

TOTAL LUMP SUM BID PRICE \$ \_\_\_\_\_  
(Figures)

TOTAL LUMP SUM BID PRICE \_\_\_\_\_  
(Words)



A. Unit Prices have been computed in accordance with paragraph 11.03.B. of the General Conditions.

B. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.

C. The undersigned agrees that the unit prices shall govern in checking the Bid, and should a discrepancy exist in the Total Estimated Price and Total Amount of Unit Prices Bid as listed above after extensions are checked and corrections made, if any, the Total Amount of Unit Prices Bid as corrected shall be used in awarding this Contract.

D. The OWNER reserves the right to reject any or all bids.

6.01 Bidder agrees that the Work will be substantially completed and competed and ready for final payment in accordance with 14.07 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.

7.01 The following documents are attached to and made a condition of the Bid:

A. Required Bid security in the amount of 10% of the maximum Bid price including alternates , if any, and in the form of a Bid Bond identified in the Instructions To Bidders.

*{Specific for each project}*

B. AGENCY required certifications. (Refer to Special Provisions, for AGENCY certifications and requirements.)

C. Any requirements per Special Provisions, including a tabulation of Subcontractors, Suppliers {and others} individuals and entities required to be identified in this Bid, required Bidder qualifications statement with supporting data; and,

D. List other documents as pertinent.

8.01 The terms used in this Bid with the initial capital letters have the meanings indicated in the Instructions To Bidders, General Conditions, and the Supplementary Conditions.

SUBMITTED on \_\_\_\_\_, \_\_\_\_\_.

Montana Contractor's Registration # (if any) \_\_\_\_\_.

Employer's Tax ID No. \_\_\_\_\_

**If BIDDER is:**

**An Individual:** \_\_\_\_\_

(Name typed or printed)

By: \_\_\_\_\_ (SEAL)

(Individual's Signature)

Doing business as: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No: \_\_\_\_\_

**A Partnership:** \_\_\_\_\_

(Partnership Name)

By: \_\_\_\_\_ (SEAL)

(Signature)

\_\_\_\_\_ (Name, typed or printed)

Business Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No: \_\_\_\_\_

**A Corporation:** \_\_\_\_\_ (SEAL)

(Corporation Name)

State of Incorporation: \_\_\_\_\_

Type (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

By: \_\_\_\_\_

(Signature of person authorized to sign)

Title: \_\_\_\_\_

Attest: \_\_\_\_\_ (CORPORATE SEAL)

(Signature of Secretary)

Business Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No: \_\_\_\_\_

Date of Qualification To Do Business Is: \_\_\_\_\_

**A Joint Venture:** Each Joint Venture Must Sign

Joint Venturer Name: \_\_\_\_\_ (SEAL)

(Name)

By: \_\_\_\_\_

(Signature of Joint Venture Partner)

Name: \_\_\_\_\_

(Name, printed or typed)

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No: \_\_\_\_\_

Joint Venturer Name: \_\_\_\_\_ (SEAL)

(Name)

By: \_\_\_\_\_

(Signature of Joint Venture Partner)

Name: \_\_\_\_\_

(Name, printed or typed)

Title: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No: \_\_\_\_\_

Address of Joint Venture for Receipt of Official Communication:

Address: \_\_\_\_\_

\_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No: \_\_\_\_\_

(Each Joint Venture must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above.)

END OF SECTION 00300





**BID BOND****BIDDER** (Name and Address):**SURETY** (Name and Address of Principal Place of Business):**OWNER** (Name and Address):**BID**

BID DUE DATE: \_\_\_\_\_

PROJECT (Brief Description Including Location): \_\_\_\_\_

**BOND**

BOND NUMBER: \_\_\_\_\_

DATE (Not later than Bid due date): \_\_\_\_\_

PENAL SUM: \_\_\_\_\_ (Words) \_\_\_\_\_ (Figures)

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

**BIDDER****SURETY**\_\_\_\_\_  
(Seal)

Bidder's Name and Corporate Seal

\_\_\_\_\_  
(Seal)

Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature and TitleBy: \_\_\_\_\_  
Signature and Title  
(Attach Power of Attorney)Attest: \_\_\_\_\_  
Signature and TitleAttest: \_\_\_\_\_  
Signature and Title

- Note: (1) Above addresses are to be used for giving required notice.  
(2) Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1. OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents, or
  - 3.2. All Bids are rejected by OWNER, or
  - 3.3. OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power or Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer or proposal as applicable.

\*\*\* BID TABULATION \*\*\*

Project Name: HARDIN '94 WTR.TREAT.FAC.IMP  
Owner: CITY OF HARDIN  
Bid Opening Date: 10/20/94

Page: 1  
MORRISON-MAIERLE/CSSA  
Proj. No. 2620.003-040-0211

Contractor		COP CONSTRUCTION		MAINLINE CONSTRUC		ENGINEER'S	
		P.O. BOX 20913		635 BENCH BLVD.		P.O. BOX 1459	
		BILLINGS, MT 59104		BILLINGS, MT 59105		BILLINGS, MT 59103	
License No.		543-A		6695-A		6988-A	

ITEM NO.	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
=====									

WTR.TREAT.FAC.IMPROV

101	1.00	LS	77,000 GAL. CLEARWELL ADD.	104000.00	104000.00	122132.00	122132.00	215000.00	215000.00	56000.00	56000.00
102	1.00	LS	HYPALON CLEARWELL BAFFLES	14000.00	14000.00	19915.00	19915.00	25000.00	25000.00	20000.00	20000.00
103	1.00	LS	14" CLEARWELL HEADER PIPE	25000.00	25000.00	34435.00	34435.00	40000.00	40000.00	5000.00	5000.00
104	1.00	LS	CLEARWELL ALARM SYSTEM	14500.00	14500.00	18216.00	18216.00	20000.00	20000.00	8900.00	8900.00
105	1.00	LS	HEADER PIPE & CLEARWELL CLEAN & DISINF.	2000.00	2000.00	1000.00	1000.00	2000.00	2000.00	10000.00	10000.00
106	1.00	LS	SED. BASIN IMPROV.	59000.00	59000.00	60010.00	60010.00	60000.00	60000.00	48500.00	48500.00
107	45.00	LF	12" O.I. BACKWASH DRAIN PIPE	44.00	1980.00	81.00	3645.00	38.00	1710.00	100.00	4500.00
108	150.00	LF	15" PVC BACKWASH DRAIN PIPE	24.00	3600.00	62.30	9345.00	29.00	4350.00	33.00	4950.00
109	165.00	LF	12" PVC STORM DRAIN	19.00	3135.00	43.75	7218.75	26.00	4290.00	25.00	4125.00
110	1100.00	LF	12" FORCE MAIN & LAG INLET PIPING	22.00	24200.00	35.00	38500.00	20.00	22000.00	35.00	38500.00
110 A	55.00	LF	10" FORCE MAIN	24.00	1320.00	52.00	2860.00	26.00	1430.00	35.00	1925.00
111	2.00	EA	CONNECT. NEW PVC FM TO EXIST. AC FM	800.00	1600.00	2587.00	5174.00	1000.00	2000.00	1000.00	2000.00
112	3.00	EA	12" FORCE MAIN BEND	450.00	1350.00	595.00	1785.00	300.00	900.00	350.00	1050.00
112 A	1.00	EA	10" FORCE MAIN BEND	250.00	250.00	513.00	513.00	300.00	300.00	250.00	250.00
113	3.00	EA	12" FORCE MAIN TEE	350.00	1050.00	629.00	1887.00	500.00	1500.00	400.00	1200.00
113 A	1.00	EA	10"x12" FORCE MAIN TEE	700.00	700.00	957.00	957.00	800.00	800.00	400.00	400.00
114	2.00	EA	BACKWASH DRAIN FITT.	350.00	700.00	382.00	764.00	300.00	600.00	400.00	800.00
115	4.00	EA	STORM DRAIN FITTINGS	170.00	680.00	148.00	592.00	100.00	400.00	150.00	600.00



\*\*\* BID TABULATION \*\*\*

Project Name: HARDIN '94 WTR.TREAT.FAC.IMP  
Owner: CITY OF HARDIN  
Bid Opening Date: 10/20/94

Page: 2  
MORRISON-MATERLE/CSSA  
Proj. No. 2620.003-040-0211

Contractor

COP CONSTRUCTION  
P.O. BOX 20913  
BILLINGS, MT 59104

MAINLINE CONSTRUCT  
635 BENCH BLVD.  
BILLINGS, MT 59105

WILLIAMS BROS.  
P.O. BOX 1459  
BILLINGS, MT 59103

ENGINEER'S  
ESTIMATE

License No.

6695-A

6695-A

543-A

ITEM NO.	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
116	3.00	EA	48"X5' BASIC MH	1500.00	4500.00	1316.00	3948.00	600.00	1800.00
117	1.00	EA	24" STD. RISER INLET	770.00	770.00	650.00	650.00	400.00	400.00
118	1.00	EA	MOD. EXIST. MH	300.00	300.00	900.00	900.00	500.00	500.00
119	23.00	VF	ADD. MH DEPTH	49.00	1127.00	80.00	1840.00	80.00	1840.00
120	1.00	EA	RECONN. EXIST. CATCH BASIN	250.00	250.00	150.00	150.00	100.00	100.00
121	2.00	EA	RECONN. SED. BASIN DRAIN PIPE	240.00	480.00	500.00	1000.00	100.00	200.00
122	7.00	EA	12" PLUG VALVES	2150.00	15050.00	2765.00	19355.00	2000.00	14000.00
123	1.00	LS	LIFT STATION	193300.00	193300.00	216390.00	216390.00	169000.00	169000.00
124	1.00	LS	LAGOON EXCAV. & EMNK	80000.00	80000.00	135072.00	135072.00	296000.00	296000.00
125	1.00	EA	DISCH. TO BIGHORN RV	7000.00	7000.00	8755.00	8755.00	8000.00	8000.00
126	3.00	EA	LAGOON OUTLET STRUC. & INTERPOND PIPING	6500.00	19500.00	8640.00	25920.00	7000.00	21000.00
127	1.00	EA	LAGOON FILLING	2000.00	2000.00	1600.00	1600.00	1000.00	1000.00
128	1.00	LS	LAGOON AREA SEEDING	4200.00	4200.00	1200.00	1200.00	8000.00	8000.00
129	1.00	LS	VERT. MAN LIFT CONVEY SYSTEM	21000.00	21000.00	1500.00	1500.00	20000.00	20000.00
130	110.00	LF	IMPROV. STR. RESTOR ASPH & BASE GRAV.	48.00	5280.00	55.00	6050.00	40.00	4400.00
131	740.00	LF	UNIMPROV. STR. AREA RESTOR - BASE GRAV.	9.00	6660.00	6.75	4995.00	20.00	14800.00
132	1.00	LS	UNIMPROV. SURF. REST - LAWN/HYDROSEED	1000.00	1000.00	1000.00	1000.00	2000.00	2000.00
133	5.00	EA	UNDERGRND. FACILITY CROSSING	100.00	500.00	500.00	2500.00	300.00	1500.00
134	20.00	LF	REMOV/REPL CONC. CURB & GUTTER	17.00	340.00	15.00	300.00	20.00	400.00
135	75.00	SF	REMOV/REPL CONC. WALK	6.00	450.00	10.00	750.00	3.00	225.00

\*\*\* BID TABULATION \*\*\*

Project Name: HARDIN '94 WTR.TREAT.FAC.IMP  
 Owner: CITY OF HARDIN  
 Bid Opening Date: 10/20/94

Page: 3  
 MORRISON-HAIERLE/CSSA  
 Proj. No. 2620.003-040-0211

Contractor	COP CONSTRUCTION P.O. BOX 20913 BILLINGS, MT 59104	MAINLINE CONSTRUC 635 BENCH BLVD. BILLINGS, MT 59105	WILLIAMS BROS., P.O. BOX 1459 BILLINGS, MT 59103	ENGINEER'S ESTIMATE
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License No.	543-A	6695-A	6988-A
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ITEM NO.	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
136	150.00	SF	REMOV/REPL CONC. ALLEY/DRWY APPRO.	7.00	1050.00	15.00	2250.00	4.00	600.00
137	50.00	CY	ALT - SUBEXC. & TYPE 2 BEDDING	13.00	650.00	15.00	750.00	15.00	750.00
138	25.00	HR	ALT - EXPLOR/EX.WRK SEC 02221.09.C	85.00	2125.00	30.00	750.00	100.00	2500.00
139	25.00	HR	ALT - EXPLOR/EX.WRK MAINLINE CREW/EQUIP	220.00	5500.00	60.00	1500.00	300.00	7500.00
140	1.00	LS	FURN/ERECT/MAINT TRAFFIC CONTROL	4500.00	4500.00	3000.00	3000.00	2500.00	2500.00
141	1.00	LS	MOBIL/DEMOBIL	20000.00	20000.00	41654.00	41654.00	50000.00	50000.00
142	1.00	LS	TAXES,BONDS,INSUR	15000.00	15000.00	27973.00	27973.00	30000.00	30000.00
143	8.00	EA	BENTON/CLAY TRENCH PLUGS	300.00	2400.00	300.00	2400.00	200.00	1600.00
144	1.00	EA	ALT - REGRADE SWR SERV. CROSS.	500.00	500.00	200.00	200.00	1000.00	1000.00
TOTAL BID THIS SCHEDULE				674497.00		843300.75		1063895.00	
TOTAL BID *****				674497.00		843300.75		1063895.00	



## EXHIBIT 6

### NOTICE OF AWARD

Dated \_\_\_\_\_

[Certified Mail -- Return Receipt Requested]

TO: \_\_\_\_\_  
(BIDDER)

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contract: \_\_\_\_\_  
(Insert name of Contract as it appears in the Bidding Documents)

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_

You are notified that your Bid dated \_\_\_\_\_ for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a Contract for \_\_\_\_\_

(Indicate total Work, alternates or sections of Work awarded)

The Contract Price of your Contract is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

*[Insert appropriate data if Unit Prices are used. Change language for Cost-Plus contracts]*

\_\_\_ copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. \_\_\_ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within 15 days of the date you receive this Notice of Award.

1. Deliver to the OWNER            fully executed counterparts of the Contract Documents. [Each of the Contract Documents must bear your signature on (                    )].
2. Deliver with the executed Contract Documents the Contract security (Bonds) as specified in the Instructions to Bidders (Article 20), [and] General Conditions (paragraph 5.01) [and Supplementary Conditions (paragraph SC-5.01).]

EJCDC No. 1910-22 (1996 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.



Blank lined paper.

Within ten days after you comply with the above conditions, OWNER will return to you one fully executed counterpart of the Contract Documents.

By: \_\_\_\_\_  
(AUTHORIZED SIGNATURE)

(TITLE)

Exhibits - 30

EXHIBIT 7

SECTION 00500  
AGREEMENT FORM

This Agreement is dated as of the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, by and between \_\_\_\_\_, hereinafter called "OWNER" and \_\_\_\_\_ hereinafter called CONTRACTOR. OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK.**

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Article 2. THE PROJECT.**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Article 3. ENGINEER.**

3.01 The Project has been designed by: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

## **Article 4. CONTRACT TIME.**

### **4.01 Time of the Essence**

A. All the time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

### **4.02 Days to achieve Substantial Completion.**

A. The Work will be substantially complete within \_\_\_\_\_ days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions.

### **4.03 Liquidated damages.**

A. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \_\_\_\_\_ dollars (\$ \_\_\_\_\_) for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete.

## **Article 5. CONTRACT PRICE:**

5.01 Owner shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the quantity of that item that is constructed and accepted. Unit prices are those listed in the Unit Price Schedule of the Bid Form attached as Exhibit A to this Agreement. Estimated quantities used for bidding purposes are not guaranteed, payment will be for actual quantities as determined by ENGINEER in accordance with Article 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

## **Article 6. PAYMENT PROCEDURES:**

### **6.01 Submittal and Processing of Payments:**

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the Contract Documents.

## 6.02 Progress Payments; Retainage:

A. OWNER shall make progress payments in accordance with Article 14 of the General Conditions on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, once each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the number of units of each bid item completed times the bid unit price in the Unit Price Schedule of the Bid Form for that item.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the sum of the unit price items less the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions.

a . The OWNER shall retain five percent (5%) of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents.

b. Retainage will be five percent (5%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02 of the General Conditions).

2. Upon Substantial Completion and at the OWNER'S discretion, the amount of retainage may be further reduced if requested by the CONTRACTOR.

6.03 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

## Article 7. INTEREST:

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.



## **Article 8. CONTRACTOR'S REPRESENTATION:**

8.01 In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents (including all Addenda listed in paragraph 9 and the other related data identified in the Bidding Documents

B. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Special Provisions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Special Provisions as provided in paragraph 4.06 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR including applying the specific means, methods, techniques, sequences and procedures of construction, if any, expressly required by the Contract Documents to be employed by the CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract

Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

I. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## **Article 9. CONTRACT DOCUMENTS:**

### **9.01 Contents**

A. The Contract Documents consist of the following:

1. This Agreement (Pages 1 to , inclusive);
2. Performance Bond (pages 1 to , inclusive);
3. Payment Bond (pages 1 to , inclusive);
4. Other Bonds (pages 1 to , inclusive);
  - a. (pages to , inclusive);
  - b. (pages to , inclusive);
  - c. (pages to , inclusive);
5. General Conditions (pages 1 to , inclusive);
6. Supplementary Conditions (pages 1 to , inclusive);
7. Special Provisions (pages 1 to , inclusive);
8. Specifications as listed in the table of contents of the Project Manual;
9. Drawings consisting of a cover sheet and sheets numbered \_\_\_\_ through \_\_\_\_ with each sheet bearing the following general title: \_\_\_\_\_;
10. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive);

11. Exhibits to this Agreement (enumerated as follows):
  - a. Notice To Proceed (pages 1 to \_\_ , inclusive);
  - b. CONTRACTOR's Bid (pages \_\_\_\_ to \_\_\_\_, inclusive);
  - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive);
  - d. \_\_\_\_\_ ;
12. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Written Amendments;
  - b. Work Change Directives;
  - c. Change Order(s).

B. The documents listed in paragraph 9.01.A. are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9 .

D. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04 of the General Conditions.

#### **Article 10. MISCELLANEOUS:**

##### **10.01 Terms.**

A. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

##### **10.02 Assignment of Contract.**

A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may come due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

##### **10.03 Successors and Assigns**

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

#### 10.04 Severability

A. Any provision of part of the Contract Documents held to be void or unenforceable under and Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed 6 copies of Agreement. Three counterparts have been delivered to OWNER, two to CONTRACTOR and one to ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

**This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the effective date of the Agreement). This Agreement shall not be effective unless and until concurred in by AGENCY's designated representative.**

OWNER \_\_\_\_\_  
\_\_\_\_\_

CONTRACTOR \_\_\_\_\_  
\_\_\_\_\_

BY \_\_\_\_\_  
(CORPORATE SEAL)

BY \_\_\_\_\_  
(CORPORATE SEAL)

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices  
\_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_

Phone No. \_\_\_\_\_

FAX No. \_\_\_\_\_

FAX No. \_\_\_\_\_

(If OWNER is a public body,  
attach evidence of authority  
to sign and resolution or  
other documents authorizing  
execution of OWNER-CONTRACTOR  
Agreement.

Contractor Registration No. \_\_\_\_\_

Agent for service of process:  
\_\_\_\_\_  
\_\_\_\_\_

(If CONTRACTOR is a corporation  
or a partnership, attach evidence of  
authority to sign.)



Designated Representative  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

FAX No.: \_\_\_\_\_

Designated Representative  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No.: \_\_\_\_\_

FAX No.: \_\_\_\_\_

AGENCY Concurrence: As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the AGENCY hereby concurs in the form, content, and execution of this Agreement.

By: \_\_\_\_\_

(AGENCY Official's Signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

END OF SECTION 00500

# Contract Award Report

STATE OF MONTANA

DEPARTMENT OF REVENUE

CONTRACT AWARDING AGENCY OR PRIME CONTRACTOR MUST COMPLETE THIS FORM AND MAIL TO THE STATE DEPARTMENT OF REVENUE WITHIN 10 DAYS AFTER CONTRACT OR BID HAS BEEN OFFICIALLY AWARDED.

1	Contract Awarded by (Agency or Prime Contractor)		<b>MAIL TO:</b>  Business Tax Section Income & Miscellaneous Tax Division Department of Revenue PO Box 5835 Helena, MT 59604	
	Name			
	Address			
	City/Town	Zip Code		
2	Contract Awarded to (Prime or Subcontractor)		3	Montana Contractor's Registration Number
	Name		4	Contract Award Date
	Address		5	Construction Completion Date
	City/Town	Zip Code		
6	Contract Number/Official Designation		7	Contract Amount
8	Description of Work to be performed			
9	Location of work to be performed (be specific)			
Report Submitted by		Agency or Prime Contractor		
Award Authorization		Preparer's Signature		Date
Preparer's Telephone Number				

## INDIVIDUAL INCOME AND CORPORATION TAX CREDIT ALLOWANCES

The 1% tax withheld from any contractor is allowed as a credit against Montana individual income or corporation tax liability incurred by the contractor. The credit is allowed for the taxable period within which the net income from contracts subject to the gross receipts tax is reported.

The credit is allowed for the month it was earned, not when it is received by the department. In other words, if a contractor's progress payment request was for work performed in October and the 1% tax was withheld and paid in the following month of November, the credit was earned in October not November when it was reported and paid to the department.

**Please note: this credit does not carry forward from year to year.**

The following ledger sheet example uses the credit against an individual income tax liability where the taxpayer is a sole proprietor, sub "S" corporation shareholder or partner. It is important to note that a sole proprietor can use all the available credit. The shareholders and partners are only allowed a percentage according to their share of ownership.

Using the same example, a "C"-corporation can use all the credit against its tax liability.

If there is no tax liability, there would be nothing against which to credit the 1% tax.

**Please note: on an actual ledger, only the individual income tax or "C" - corporation tax credit would be shown-- one or the other, not both.**

### Sample ledger

XYZ Construction PO Box 1234 Helena, MT 59604		6/1/95 BR-STPU 3333(3)F Bdgc Construction 10 Mile Creek Helena, MT		\$50,000.00	
Transportation, MT Dept. of 2701 Prospect Ave. Helena, MT 59620					

DATE		GROSS RECEIPTS TAX	INCOME OR CORP TAX	PERSONAL PROP TAX	BALANCE
7/1/95	651234	500.00			500.00
7/10/95	123 Concrete	(250.00)			250.00
1/15/96	1995 Pers. Prop Tax Refund 95123456			(100.00)	150.00
2/23/96	1995 Inc. or Corp Tax credit 958888		(150.00)		0.00

## EXHIBIT 9

<b>GROSS RECEIPTS WITHHOLDING REPORT</b>  <b>State of Montana</b>  <b>DEPARTMENT OF REVENUE</b>		Department of Revenue Use Only  <div style="border: 1px solid black; height: 50px; width: 100%;"></div>		
<p>The agency or contractor must, in accordance with Section 15-50-206, Montana Code Annotated, withhold one percent (1%) of incremental payments due the contractor or subcontractor. Amounts withheld from a prime contractor must be forwarded with this report to the Department of Revenue. Amounts withheld from subcontractors must be reported on this form so that proper allocation of credit can be made from prime contractor's account to the subcontractor.</p>				
1	Contract Awarded by (Agency or Prime Contractor)		<b>MAIL TO:</b> <b>Business Tax Section</b> <b>Income &amp; Miscellaneous Tax Division</b> <b>Department of Revenue</b> <b>PO Box 5835</b> <b>Helena, MT 59604</b>	
	Name			
	Address			
	City/Town	Zip		
2	Contract Awarded by (Prime or Subcontractor)		3	Montana Contractor's Registration Number
	Name		4	Contract Award Date
	Address			
	City/Town	Zip		
5	Contract Number/Official Designation.		>	
6	Month and year increment payment earned.		>	
7	Gross amount due contractor or subcontractor at the time of this report.		>	
8	Amount withheld (1% of line 7). If payment made to prime contractor, remittance must accompany report.		>	
9	Net amount paid contractor or subcontractor at the time of this report.		>	
10	Check proper box for type of report being filed:  <div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> <input type="checkbox"/>  <input type="checkbox"/> </div> <div>             Remittance attached for credit to prime contractor's account.               Subcontractor Allocation. Authorization to transfer credit to subcontractor. Failure of prime contractor to file a distribution report within thirty (30) days of payment will result in a 10% penalty.               Date payment made to subcontractor _____           </div> </div>			
11	Location and brief description of work being performed:  <div style="border: 1px solid black; height: 100px; width: 100%;"></div>			
REPORT SUBMITTED BY		Agency or Prime Contractor		
AWARD AUTHORIZATION		Preparer's Signature		Date
Preparer's Telephone Number				



## APPLICATION FOR REFUND OF CONTRACTORS GROSS RECEIPTS TAX

Having paid personal property taxes on assets used in his contracting business, the following public contractor applies for a refund of these taxes from his account.

MAIL REFUND TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MONTANA CONTRACTORS' REGISTRATION NUMBER \_\_\_\_\_

PERSONAL PROPERTY TAXES PAID DURING AND FOR CALENDAR YEAR. \_\_\_\_\_

1. List below by official contract number or other designation the total amount of contractors gross receipts tax withheld or paid during the calendar year. If more space is needed, attach a separate sheet.

CONTRACT NUMBER OR OTHER  
DESIGNATION

AMOUNT

2. List below personal property taxes paid for and during the calendar year covered by this refund claim. Attach copies of paid tax receipts to this claim. If more space is needed, attach a separate sheet.

IDENTIFICATION OF  
PERSONAL PROPERTY

RECEIPT  
NUMBER

AMOUNT

TOTAL REFUND  
CLAIMED \$ \_\_\_\_\_

Applicant \_\_\_\_\_

By \_\_\_\_\_

Office Telephone \_\_\_\_\_

# Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place  
of Business):

OWNER (Name and Address):

## CONTRACT

Date:

Amount:

Description (Name and Location):

## BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent or representative.

## CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

## SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

## CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

## SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

EJCDC No. 1910-28-A (1996 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects

1 The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference

2 If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3 1

3 If there is no OWNER Default, the Surety's obligation under this Bond shall arise after

3 1 The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default, and

3 2 The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3 1, and

3 3 The OWNER has agreed to pay the Balance of the Contract Price to

3 3 1 The Surety in accordance with the terms of the Contract,

3 3 2 Another contractor selected pursuant to paragraph 4 3 to perform the Contract

4 When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions

4 1 Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract, or

4 2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors, or

4 3 Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default, or

4 4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances,

4 4 1 After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER, or

4 4 2 Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5 If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4, and the OWNER refuses the payment tendered or the Surety has denied

liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER

6 After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4 1, 4 2, or 4 3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for

6 1 The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract,

6 2 Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4, and

6 3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR

7 The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors

8 The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable

10 Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond

## 12 Definitions

12 1 Balance of the Contract Price The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract

12 2 Contract The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto

12 3 CONTRACTOR Default Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract

12 4 OWNER Default Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof

(FOR INFORMATION ONLY--Name, Address and Telephone)

AGENT or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

EXHIBIT 11

# Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

---

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place  
of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

BOND

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

SURETY

Company: \_\_\_\_\_ (Corp. Seal)

Signature: \_\_\_\_\_

Name and Title:

EJCDC No. 1910-28-B (1996 Edition)Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.



- 1 The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference
- 2 With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default
- 3 With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due
- 4 The Surety shall have no obligation to Claimants under this Bond until
  - 4.1 Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim
  - 4.2 Claimants who do not have a direct contract with the CONTRACTOR:
    - 1 Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed, and
    - 2 Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly, and
    - 3 Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR
- 5 If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance
- 6 When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed
  - 6.2 Pay or arrange for payment of any undisputed amounts.
- 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety
- 8 Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work
- 9 The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond
- 10 The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations
- 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable
- 12 Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page
- 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond
- 14 Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made
- 15 DEFINITIONS
  - 15.1 Claimant. An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished
  - 15.2 Contract. The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto
  - 15.3 OWNER Default. Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof

FOR INFORMATION ONLY--Name, Address and Telephone)  
AGENCY or BROKER: OWNER'S REPRESENTATIVE (Engineer or other party):

EXHIBIT 12  
NOTICE TO PROCEED

Dated \_\_\_\_\_

TO: \_\_\_\_\_  
(CONTRACTOR)

ADDRESS<sup>1</sup>: \_\_\_\_\_

Contract: \_\_\_\_\_  
(Insert name of Contract as it appears in the Contract Documents)

Project: \_\_\_\_\_

OWNER'S CONTRACT NO. \_\_\_\_\_

You are notified that the Contract Times under the above contract will commence to run on \_\_\_\_\_. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement the date of Substantial Completion is \_\_\_\_\_ and the date of readiness for final payment is \_\_\_\_\_.

Before you may start any Work at the Site, paragraph 2.05.C of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must  
(add other requirements)

(OWNER)

By:

(AUTHORIZED SIGNATURE)

(TITLE)

Copy to ENGINEER

(Use Certified Mail, Return Receipt Requested)

EJCDC No. 1910-22 (1996 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.



# EXHIBIT 13

PERIODIC COST ESTIMATE		DATE	Page 1 of 5	Pages
		12/12/1999	Project No. 9999-9999-99	
ANY CITY/TOWN, USA		Estimate No. 1 (ONE)		
Name of Owner		Period From 09/09/1999 to 12/12/1999		
BEST CONTRACTOR YOU CAN GET 4321 EAST STREET		Original Contract Amount		
Name of Contractor ANY CITY/TOWN, USA		\$ 1,000,000.00		
EXAMPLE PAY ESTIMATE		Estimated Final Contract		
Project Name		Amount \$ 0.00		
		Owner's Contract No.		
Total Amount Due this Estimate \$ 0.00		% Physical Completion		
Less 1% State Tax 0.00		Dollars *** Time 105		
NET DUE CONTRACTOR \$ 0.00				
		Contract Time   Auth. Extension		
		90   0		
Notice to Proceed		Original Comp.	Adjust. Comp.	Actual Starting date.
Date 09/09/1999		12/09/1999	12/09/1999	09/09/1999
		Days Used 95	Days Remain -5	
<p>CERTIFICATION OF CONTRACTOR - I HEREBY CERTIFY that I submitted a request for payment for the pay period covered in this Progress Estimate and that there are no claims for extra work, delays, omitted items or claims of any nature whatsoever pending against the Owner or engineer not set forth herein unless expressly stated otherwise in this Progress Estimate. I further certify that the work performed and the materials supplied to date, as shown on this Progress Estimate, represents the actual value of accomplishment under the terms of the CONTRACT, that the work performed and the materials supplied are in conformance with the plans and specifications, that the quantities were properly determined and are correct, and that there has been full compliance with all labor provisions included in the above referenced contract.</p>				
DATE		CONTRACTOR'S NAME: BEST CONTRACTOR YOU CAN GET		
BY   TITLE:		SIGNATURE		
<p>REVIEW BY OWNER'S ENGINEER - Based on site observation of the Work, accompanying data and schedules that the Work has progressed to the point indicated, and to the best of the Engineer's knowledge, information and belief, the Quality of the Work is in accordance with the Contract Documents and that the Contractor is entitled to payment of the amount requested.</p>				
DATE		SIGNATURE, MMI TITLE: PROJECT MANAGER		
DATE		SIGNATURE, OWNER TITLE		
		THE TOWN/CITY		
database file: EXAMPLE		"PEREST" System copyright Morrison-Maierle, Inc.		
1				



=====

PERIODIC COST ESTIMATE  
(Continuation Sheet)

DATE            Page    2  
12/12/1999    Project No. 9999-9999-99

-----

ANY CITY/TOWN, USA  
Name of Owner

EXAMPLE PAY ESTIMATE  
Official Name of Project

Estimate No.    1 (ONE)  
Period From: 09/09/1999 to 12/12/1999

-----

Breakdown of Periodic Cost Estimate

-----

Latest Revised Detailed Estimate

-----

**PROJECT INFORMATION**

09/09/1999 Notice of Award  
09/09/1999 Notice to Proceed  
11/11/1999 Change Order No. 1  
12/12/1999 Substantial Completion  
09/09/1999 Date of Notice to Proceed.  
09/09/1999 Date Contractor actually started work.

PERIODIC COST ESTIMATE  
(Continuation Sheet)

DATE 12/12/1999 Page 3  
Project No. 9999-9999-99

ANY CITY/TOWN, USA  
Name of Owner

EXAMPLE PAY ESTIMATE  
Official Name of Project

Estimate No. 1 (ONE)  
Period From: 09/09/1999 to 12/12/1999

Breakdown of Periodic Cost Estimate

Latest Revised Detailed Estimate

ITEM		PLN	UNIT	CONTRACT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	% OF	
NO.	DESCRIPTION OF ITEM	QTY	UNIT	PRICE	\$ AMT.	THS. EST.	THS. EST.	TO DATE	TO DATE	BID
-----										
BASE BID										
101	ITEM NO. 1		0.00	0.00	0.00	1.00	0.00	1.00	0.00	****
102	ITEM NO. 2		0.00	0.00	0.00	1.00	0.00	1.00	0.00	****
103	ITEM NO. 3		0.00	0.00	0.00	1.00	0.00	1.00	0.00	****
TOTAL FOR THIS SCHEDULE					0.00		0.00		0.00	***

=====

PERIODIC COST ESTIMATE  
(Continuation Sheet)

DATE                      Page    4  
12/12/1999              Project No. 9999-9999-99

ANY CITY/TOWN, USA  
Name of Owner

EXAMPLE PAY ESTIMATE  
Official Name of Project

Estimate No.    1 (ONE)  
Period From: 09/09/1999 to 12/12/1999

-----  
Breakdown of Periodic Cost Estimate  
-----

-----  
Latest Revised Detailed Estimate  
-----

ITEM		PLN		UNIT	CONTRACT	QUANTITY	AMOUNT	QUANTITY	AMOUNT	% OF
NO.	DESCRIPTION OF ITEM	QTY	UNIT	PRICE	\$ AMT.	THS. EST.	THS. EST.	TO DATE	TO DATE	BID CMPL

-----

TOTAL ORIGINAL CONTRACT ITEMS

TOTAL CONTRACT CHANGES

TOTAL THIS ESTIMATE

	0.00	0.00	***
		0.00	
		0.00	

PERIODIC COST ESTIMATE  
(Continuation Sheet)

DATE Page 5  
12/12/1999 Project No. 9999-9999-99

ANY CITY/TOWN, USA  
Name of Owner

EXAMPLE PAY ESTIMATE  
Official Name of Project

Estimate No. 1 (ONE)  
Period From: 09/09/1999 to 12/12/1999

Breakdown of Periodic Cost Estimate

AMOUNT EARNED

COMPLETED TO DATE, ORIGINAL CONTRACT ITEMS	0.00
COMPLETED TO DATE, APPROVED CHANGE ORDERS	0.00
PLUS MATERIALS ON SITE	0.00
TOTAL COMPLETED TO DATE	0.00

LESS DEDUCTIONS

(1) Retained	0.00	(Contract Work Items + Materials)
(2) Liquidated Damages	0.00	
(3) Retesting	0.00	

		TO DATE PROJ. TOTAL
TOTAL AMOUNT DEDUCTED	0.00	*****
TOTAL AMOUNT EARNED TO DATE (inc. 1% State Tax)	0.00	* 0.00 *
LESS PREVIOUS PAYMENTS (inc. 1% State Tax)	0.00	* *
AMOUNT DUE THIS ESTIMATE (inc. 1% State Tax)	0.00	* *
1% STATE TAX (WITHHELD THIS ESTIMATE)	0.00	* 0.00 *
NET AMOUNT DUE CONTRACTOR (This Estimate)	0.00	* 0.00 *





# EXHIBIT 14

## OVERTIME HOURS REPORT

Employee \_\_\_\_\_  
Week Ending \_\_\_\_\_

Project Name: \_\_\_\_\_  
Project Number: \_\_\_\_\_

<u>DATE</u>	<u>OVERTIME HOURS</u>	<u>SCHEDULE</u>	<u>CONTRACTOR'S OPERATION/ REASON FOR OVERTIME WORK</u>
Monday _____, 19__	_____	_____	_____ _____ _____
Tuesday _____, 19__	_____	_____	_____ _____ _____
Wednesday _____, 19__	_____	_____	_____ _____ _____
Thursday _____, 19__	_____	_____	_____ _____ _____
Friday _____, 19__	_____	_____	_____ _____ _____
Saturday _____, 19__	_____	_____	_____ _____ _____
Sunday _____, 19__	_____	_____	_____ _____ _____

.....  
Total Week Overtime Hours

Employee Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

-----  
To be Completed by Project Engineer:  
-----

Employee Base Rate: \_\_\_\_\_  
Overtime Factor: \_\_\_\_\_  
Overtime Rate: \_\_\_\_\_  
M-M Cost Markup  
Factor: \_\_\_\_\_

Employee Overtime  
Cost Per Hour: \_\_\_\_\_

Overtime Hours: \_\_\_\_\_

TOTAL OVERTIME COST: \_\_\_\_\_

\_\_\_\_\_  
Project Engineer

\_\_\_\_\_  
Date



**EXHIBIT 15  
CHANGE ORDER**

No. \_\_\_\_\_

DATE OF ISSUANCE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Contract: \_\_\_\_\_

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_

ENGINEER's Contract No. \_\_\_\_\_

ENGINEER \_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

Description:

Reason for Change Order:

Attachments: (List documents supporting change)

CHANGE IN CONTRACT PRICE:
<b>Original Contract Price</b> \$ _____
<b>Net Increase (Decrease) from previous Change Orders</b> No. ____ to ____: \$ _____
<b>Contract Price prior to this Change Order:</b> \$ _____
<b>Net increase (decrease) of this Change Order:</b> \$ _____
<b>Contract Price with all approved Change Orders:</b> \$ _____

CHANGE IN CONTRACT TIMES:
<b>Original Contract Times:</b> Substantial Completion: _____ Ready for final payment: _____ <div style="text-align: right; font-size: small;">(days or dates)</div>
<b>Net change from previous Change Orders No. ____ to No. ____</b> Substantial Completion: _____ Ready for final payment: _____ <div style="text-align: right; font-size: small;">(days)</div>
<b>Contract Times prior to this Change Order:</b> Substantial Completion: _____ Ready for final payment: _____ <div style="text-align: right; font-size: small;">(days or dates)</div>
<b>Net increase (decrease) this Change Order:</b> Substantial Completion: _____ Ready for final payment: _____ <div style="text-align: right; font-size: small;">(days)</div>
<b>Contract Times with all approved Change Orders:</b> Substantial Completion: _____ Ready for final payment: _____ <div style="text-align: right; font-size: small;">(days or dates)</div>

**RECOMMENDED:**

By: \_\_\_\_\_  
ENGINEER (Authorized Signature)

Date: \_\_\_\_\_

**APPROVED:**

By: \_\_\_\_\_  
OWNER (Authorized Signature)

Date: \_\_\_\_\_

**ACCEPTED:**

By: \_\_\_\_\_  
CONTRACTOR (Authorized Signature)

Date: \_\_\_\_\_

EJCDC 1910-8-B (1996 Edition)

Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute



## **CHANGE ORDER**

### **INSTRUCTIONS**

---

#### **A. GENERAL INFORMATION**

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

#### **B. COMPLETING THE CHANGE ORDER FORM**

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

**WORK CHANGE DIRECTIVE**

No. \_\_\_\_\_

DATE OF ISSUANCE \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Contract: \_\_\_\_\_

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_ ENGINEER's Project No. \_\_\_\_\_

You are directed to proceed promptly with the following change(s):

Description:

Purpose of Work Change Directive:

Attachments: (List documents supporting change)

If OWNER or CONTRACTOR believe that the above change has affected Contract Price any Claim for a Change Order based thereon will involve one or more of the following methods as defined in the Contract Documents.

Method of determining change in  
Contract Price:

- ☐ Unit Prices  
☐ Lump Sum  
☐ Cost of the Work \_\_\_\_\_

Estimated increase (decrease) in Contract Price:  
\$ \_\_\_\_\_

If the change involves an increase, the estimated amount is not to be exceeded without further authorization.

Estimated increase (decrease) in Contract  
Times:

Substantial Completion: \_\_\_\_\_ days;  
 Ready for final payment: \_\_\_\_\_ days.

RECOMMENDED:

AUTHORIZED:

\_\_\_\_\_  
 By: \_\_\_\_\_ ENGINEER

\_\_\_\_\_  
 By: \_\_\_\_\_ OWNER

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## **WORK CHANGE DIRECTIVE**

### **INSTRUCTIONS**

---

#### **A. GENERAL INFORMATION**

This document was developed for use in situations involving changes in the Work which, if not processed expeditiously, might delay the Project. These changes are often initiated in the field and may affect the Contract Price or the Contract Times. This is not a Change Order, but only a directive to proceed with Work that may be included in a subsequent Change Order.

For supplemental instructions and minor changes not involving a change in the Contract Price or the Contract Times a Field Order should be used.

#### **B. COMPLETING THE WORK CHANGE DIRECTIVE FORM**

Engineer initiates the form, including a description of the items involved and attachments.

Based on conversations between Engineer and Contractor, Engineer completes the following:

METHOD OF DETERMINING CHANGE, IF ANY, IN CONTRACT PRICE: Mark the method to be used in determining the final cost of Work involved and the estimated net effect on the Contract Price. If the change involves an increase in the Contract Price and the estimated amount is approached before the additional or changed Work is completed, another Work Change Directive must be issued to change the estimated price or Contractor may stop the changed Work when the estimated time is reached. If the Work Change Directive is not likely to change the Contract Price, the space for estimated increase (decrease) should be marked "Not Applicable".

Once Engineer has completed and signed the form, all copies should be sent to Owner for authorization because Engineer alone does not have authority to authorize changes in Price or Times. Once authorized by Owner, a copy should be sent by Engineer to Contractor. Price and Times may only be changed by Change Order signed by Owner and Contractor with Engineer's recommendation.

Paragraph 10.03.A.2 of the General Conditions requires that a Change Order be initiated and processed to cover any undisputed sum or amount of time for Work actually performed pursuant to this Work Change Directive.

Once the Work covered by this directive is completed or final cost and times are determined, Contractor should submit documentation for inclusion in a Change Order.

**THIS IS A DIRECTIVE TO PROCEED WITH A CHANGE THAT MAY AFFECT THE CONTRACT PRICE OR CONTRACT TIMES. A CHANGE ORDER, IF ANY, SHOULD BE CONSIDERED PROMPTLY.**

EXHIBIT 17  
**CERTIFICATE OF SUBSTANTIAL COMPLETION**

DATE OF ISSUANCE \_\_\_\_\_

OWNER \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

Contract: \_\_\_\_\_

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_

ENGINEER's Project No. \_\_\_\_\_

This Certificate of Substantial Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

To \_\_\_\_\_  
OWNER

And To \_\_\_\_\_  
CONTRACTOR

The Work to which this Certificate applies has been inspected by authorized representatives of OWNER, CONTRACTOR and ENGINEER, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

\_\_\_\_\_  
DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all-inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within \_\_\_\_\_ days of the above date of Substantial Completion.

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Prepared by the Engineers' Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute



The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees shall be as follows:

OWNER: \_\_\_\_\_

\_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The following documents are attached to and made a part of this Certificate:

*[For items to be attached see definition of Substantial Completion as supplemented and other specifically noted conditions precedent to achieving Substantial Completion as required by Contract Documents.]*

\_\_\_\_\_

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

\_\_\_\_\_

Executed by ENGINEER on \_\_\_\_\_  
Date

\_\_\_\_\_  
ENGINEER

By: \_\_\_\_\_  
(Authorized Signature)

CONTRACTOR accepts this Certificate of Substantial Completion on \_\_\_\_\_  
Date

\_\_\_\_\_  
CONTRACTOR

By: \_\_\_\_\_  
(Authorized Signature)

OWNER accepts this Certificate of Substantial Completion on \_\_\_\_\_  
Date

\_\_\_\_\_  
OWNER

By: \_\_\_\_\_  
(Authorized Signature)

# EXHIBIT 18

ANY CITY/TOWN, USA  
CITY/TOWN, USA  
ANY CITY/TOWN, USA

Page 1

CONTRACT CHANGE ORDER or ORDER FOR EXTRA WORK

DATE 03/27/2000

TO: BEST CONTRACTOR YOU CAN GET  
Contractor

ORDER NO. ONE (1)  
PROJECT NO.9999-9999-99  
EXAMPLE PAY ESTIMATE

4321 EAST STREET , ANY CITY/TOWN, USA  
Address

It has been determined necessary and in the best interest of the Owner to  
modify certain portions of the Project above and the Contract dated 09/09/1999  
and in accordance with Section 10 of the General Conditions. The  
following changes are hereby agreed as follows:

ITEM NO.	DESCRIPTION	UNIT	PRICE	QUANTITY INCREASE	QUANTITY DECREASE	DOLLARS INCREASE	DOLLARS DECREASE
----------	-------------	------	-------	-------------------	-------------------	------------------	------------------

## BASE BID

101	ITEM NO. 1		0.00	1.00		0.00	
102	ITEM NO. 2		0.00	1.00		0.00	
103	ITEM NO. 3		0.00	1.00		0.00	

Sub Totals

0.00 0.00

Total Net Change in Contract Amount

0.00

REASON FOR CHANGE: RECONCILIATION OF ORIGINAL CONTRACT TO final contract AMOUNTS.

ORIGINAL CONTRACT AMOUNT	1,000,000.00
PREVIOUS CHANGE ORDER AMOUNT	0.00
CONTRACT AMOUNT ADJUSTED BY PREVIOUSLY APPROVED CHANGE ORDERS	1,000,000.00
ADJUSTMENT, THIS CHANGE ORDER	0.00
NEW CONTRACT AMOUNT	1,000,000.00

(Where change(s) involve(s) items other than established contract items AT established contract unit prices, supply breakdown of new agreed costs ON additional sheets and attach hereto)

By reason of the above Change(s), it is agreed the stipulated contract TIME shall be increased (decreased) by 0 calander days.

The Change(s) above listed is/are hereby accepted:

Contractor

Engineer:

BEST CONTRACTOR YOU CAN GET

Name

Representative

By: \_\_\_\_\_  
Representative Title

By: \_\_\_\_\_  
Name Title

APPROVED: ANY CITY/TOWN, USA  
Owner

By: \_\_\_\_\_  
Representative Title

note: Fill all spaces. If not applicable, write N/A.

EXHIBIT 19

LIEN WAIVER FOR PRIME CONTRACTOR

THE UNDERSIGNED HEREBY ACKNOWLEDGES PAYMENT IN FULL FOR ALL LABOR,  
SERVICES, MACHINERY, TOOLS AND MATERIALS FURNISHED IN CONNECTION WITH THE  
CONSTRUCTION OF

\_\_\_\_\_  
(Project)

AT \_\_\_\_\_  
(Location)

FOR \_\_\_\_\_  
(Owner)

THRU THIS \_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_ .

AND DOES HEREBY RELEASE THE OWNER AND THE PROPERTY FROM ALL CLAIMS  
WHATSOEVER FOR SUCH LABOR, SERVICES, MACHINERY, TOOLS, AND MATERIALS  
FURNISHED AND WAIVES ALL LIEN RIGHTS THERETO.

\_\_\_\_\_  
PRIME CONTRACTOR

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

ATTEST:  
(Seal)





EXHIBIT 20

LIEN WAIVER FOR SUBCONTRACTOR/SUPPLIER

THE UNDERSIGNED HEREBY ACKNOWLEDGES PAYMENT IN FULL FOR ALL LABOR,  
SERVICES, MACHINERY, TOOLS AND MATERIALS FURNISHED IN CONNECTION WITH THE  
CONSTRUCTION OF

\_\_\_\_\_  
(Project)

AT \_\_\_\_\_  
(Location)

FOR \_\_\_\_\_  
(Owner)

THRU THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_ .

AND DOES HEREBY RELEASE THE OWNER AND THE PROPERTY FROM ALL CLAIMS  
WHATSOEVER FOR SUCH LABOR, SERVICES, MACHINERY, TOOLS, AND MATERIALS  
FURNISHED AND WAIVES ALL LIEN RIGHTS THERETO.

\_\_\_\_\_  
SUBCONTRACTOR/SUPPLIER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

ATTEST:  
(Seal)







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